United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7160

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P/S

In The

United States Court of Appeals

For The Second Circuit

MUSIC RESEARCH INC., and ADELPHI RECORDS, INC.,

Plaintiffs-Appellees-Appellants,

vs.

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff-Appellant-Appellee,

vs.

HERB GART d/b/a HERB GART MANAGEMENT, INC.,

Third-Party Defendant.

UNITED STATES COURT OF APPEALS
FILED
JUN 11 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume II, 341a - End

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counsel.

THE COURT: Just examine this witness, Mr. Newman. You called him. Get his testimony. What is the next question?

Q For 1964 you obtained permission from Music Research, you do recall doing that?

A Yes, I do.

Q You had correspondence with Richard Spottswood concerning --

THE COURT: It is in evidence, isn't it?

MR. NEWMAN: There is more, your Honor. I am talking about 1964 now.

THE COURT: All right, I will take the letters. Offer them in evidence. Don't waste time.

MR. NEWMAN: I am not.

THE COURT: You are. I say you are. Offer the evidence.

MR. NEWMAN: All right, I offer these four exhibits here.

THE COURT: State the numbers.

MR. NEWMAN: I will state the numbers on the previous ones. The previous ones --

THE COURT: Please offer the exhibits.

MR. NEWMAN: 96 and 97 in the pretrial

order.

THE COURT: Now renumbered as what?

MR. NEWMAN: Renumbered as that.

THE COURT: They will be received in evidence.

(Plaintiffs' Exhibits 96 and 97 were received in evidence)

Q What was your understanding at that time, 1964, of the relationship between Mississippi John Hurt and Music Research?

A That they were his personal managers.

Q What did that mean to you at that time?

A Personal manager is one who tends to the bookings, tends to the welfare of an artist.

Q Does he attend to recording rights?

A In many cases they arrange for recording companies to record their artists, yes, that is one of their major functions.

Q As a matter of fact, in this case the recording rights were being handled by Music Research whom you termed as his personal manager, is that correct?

A Apparently so in 1963 and '64.

Q I am sorry?

A I said apparently so, yes. A most unusual

arrangement.

THE COURT: Don't volunteer.

THE WITNESS: I am sorry.

Q I show you Exhibit dated October 23 on the stationery of Mr. Powell, addressed to Elektra Recordings and it says copy to Vanguard Recording Society.

Did you receive that?

THE COURT: Isn't that agreed to in the pretrial order?

MR. NEWMAN: I am not sure. I think it is.

A It was in my file.

Q It was in your file and as a matter of fact that is your handwriting in the upper righthand corner?

A That is correct.

Q So you did receive it?

A Yes.

THE COURT: He received it. The pretrial order says so. You are not to waste my time and the jury is asking a man whether he received a letter which the pretrial order says he received. I just won't have this type of procedure. Offer it in evidence and move along.

MR. NEWMAN: I offer it.

THE COURT: Received in evidence. Let's go.

MR. NEWMAN: Also the other documents which I will put on the record at your Honor's convenience.

THE COURT: All right. Hand them to the clerk and they will be received in evidence.

MR. CONCAGH: Excuse me, could I take those numbers down?

THE COURT: Yes, the clerk will read off the numbers. Isn't there a sheet which correlates the numbers?

MR. VASSALLO: I think, your Honor, we reverted to the pretrial order. Isn't that true, Mr. Davidson, and we just assume that all the numbers are the ones we have?

THE COURT: I tell each of you lawyers right now that every exhibit that was agreed to be received in the pretrial order may be offered without asking any witness to identify it or to look at it or whether he received it or not or any of that. None of that is necessary.

MR. NEWMAN: I am not asking questions --

THE COURT: Please go forward. Frame your

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next question.

Q There came a time, did there not, Mr. Solomon, when you entered into negotiations for a recording contract for Mississippi John Hurt?

A Yes.

Q With whom did you have those negotiations?

A Herb Gart.

Q Did you after or during the time when you had some discussions with Herb Gart make any notes of the substance of the contract which you wanted?

A I did.

Q Those are, in fact --

THE COURT: Are they in the pretrial order?

MR. DAVIDSON: Yes, sir, they are.

THE COURT: Didn't I just give you directions that you did not have to examine the witness about any document in the pretrial order? All you have to do is offer it in evidence.

MR. NEWMAN: All right, I offer this in evidence.

MR. VASSALLO: What is it?

THE COURT: What is the number?

MR. DAVIDSON: 20.

THE COURT: Received in evidence.

(Plaintiffs' Exhibit 20 was received in evidence)

Q At the time you were making these notes and having these discussions with Mr. Gart did you consider it essential that Mr. Hoskins sign any contract entered into with Mississippi John Hurt?

A No.

Q No?

A No.

Q Did you want Mr. Hoskins to sign the contract with Mississippi John Hurt?

A I would have preferred it.

Q I show you the first page of Exhibit 20. Does it not say contract to be signed also by Tom Hoskins as personal manager and Herb Gart business manager?

A It does at the request of Mr. Hoskins or Mr. Gart. Those were not my stipulations.

Q Tom Hoskins is all in capitals, isn't it?

A Would you rephrase the whereas question.

MR. CONCAGH: He is apparently trying to impeach this witness. I don't see any inconsistency.

THE COURT: Please sit down.

Q I draw your attention to the last paragraph of your notes on the first page where it says "If so, we

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trust you will find all in order" that was part of the letter, was it not, that you were going to send to Mr. Gart?

A That is correct.

Q This was a letter you were going to send to Mr. Gart?

A It is a draft of the letter that ultimately went to Mr. Gart.

Q In that letter you were asking him, were you not, to please have Mr. Hoskins (representing Piedmont and Mr. Hurt both) and yourself sign and initial all copies and return to us for a counter-signature?

A Yes, because provisions for their signatures had been made in the draft contract.

Q Who made the provisions in the draft contract for the signatures?

A Those terms were negotiated between myself, Mr. Hoskins and Mr. Gart.

Q Who caused the contracts to be typed up?

A I did.

Q It was on Vanguard's forms?

A Yes, sir.

MR. NEWMAN: I would like to show this to

the jury.

THE COURT: Sure.

MR. NEWMAN: I believe your Honor has the copies of the contracts in this case.

(Plaintiffs' Exhibits 13, 16, 98, 99, 100, 101, 102 and 103 were received in evidence)

Q I am going to show you exhibits which have already been admitted in evidence.

THE COURT: No, no speeches. Just show it to him.

Q Nos. 56, 57, and 58. Could you tell us whether those -- those do come from your records, do they not, Vanguard Records?

A Yes, they do.

Q Take 56. That is an unsigned copy of the contra ct in question, is it not?

A Unsigned original contract, yes.

Q That was in your files for what purpose?

A As a record of what was sent to Mr. Gart, and for reference.

Q Which of these was sent to Mr. Gart, 56, 57, 58.

A Both 57 and 58 and one other, I believe. I believe three copies were submitted.

THE COURT: You mean an original and two carbons?

THE WITNESS: An original and two carbons.

THE COURT: All sent to Mr. Gart?

THE WITNESS: Yes.

Q 57 isthe original, is it not?

A 57 is the original.

Q Whose handwriting is on the face of 57?

A Where?

Q Let's take between the margins.

THE COURT: Do we have a concession on this? Is there any argument about whose handwriting it is?

A Herb Gart's.

THE COURT: Do you deny that?

MR. NEWMAN: No.

THE COURT: It is Herb Gart's writing, let's go forward.

Q There is a difference, is there not, between 57 and 58, on the one hand, and 56 on the other hand, in that the signature portion for Tom Hoskins has been physically cut out of 57 and 58 whereas it appears in 56?

A That is right.

Q How did that come about?

A I don't know. I assume that he cut it out.

THE COURT: Don't assume. Just tell what you know.

A I have no idea.

Q You have no idea how it happened?

A No.

Q When did you first notice that it had happened?

A When I received the contracts in the mail accompanied by a covering letter from Mr. Gart shortly after December 30, 1965.

Q When you received these back, did you look at them?

A I certainly did.

Q Did you notice at that time that the signature was cut out?

A Yes, I did.

Q Did you speak to anyone about it?

A Yes, I did.

Q To whom did you speak?

A I spoke to Mr. Gart and I spoke to my attorney.

Q What did Mr. Gart say?

A I asked Mr. Gart why Mr. Hoskins' signature had not been obtained.

Q What did he tell you?

A He told me it was unobtainable.

Q Did he say who cut the signature out?

A No.

THE COURT: Did he tell you why it was unobtainable?

A I don't recall, your Honor, but it may have been because he was out of town. It may have been because he was unwilling to sign, I am not sure.

Q Did you get in touch with Mr. Hoskins and ask him why his signature was cut out?

A No, I did not.

Q Did you ever talk to Mr. Hoskins about this subject of his signature being physically excised from these contracts?

A No.

Q Did you ever send Mr. Hoskins a copy of this contract?

A No.

Q Did you ever send Mr. Hoskins a copy of any of the Vanguard releases, I am talking about the John Hurt albums?

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A I have no idea.

Q You heard the testimonyof Mr. Hoskins that he did not receive any?

A I have heard it.

Q Do you have any reason to doubt that?

A I have no comment.

Q Sorry?

A I have no comment.

Q You have no what?

A I have no way of knowing one way or the other whether the copies were sent to him or whether he receivedthem.

Q You did not take any affirmative action to send Mr. Hoskins any copies of these records?

A That is correct.

Q Subsequent to the entering into of this contract or at the time you entered into this contract with Mississippi John Hurt, you were aware that there was an agreement between Music Research and Vanguard Records, is that not so?

A I am not aware of an agreement between Music Research and Vanguard Records.

Q You are not to this very day aware.

I am sorry, I misspoke.

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An agreement between Music Research and Mississippi John Hurt?

A Yes.

Q You were aware at the time that Vanguard entered into this contract with Mississippi John Hurt that an agreement existed between John Hurt and Music Research?

A No, I was not.

Q You werenot aware of any agreement?

A No.

Q Were you aware that there was an arrangement which existed between Mississippi John Hurtand Music Research pursuant to which you felt obliged in the past to secure permission to publish performances by Mississippi John Hurt?

A They represented themselves to be his personal managers, yes.

Q And you acted on those represetnations, you went to the trouble of sending letters to Music Research?

A Yes.

Q And those letters are in evidence.

THE COURT: HOw would he know what is in evidence? Let's go on to another question.

Q Did there come a time when you did learn

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that there was an agreement between Mississippi John Hurt and Music Research?

A Yes, there did.

Q When did that time come?

A In or about the spring of 1966.

Q How did the news come to you?

A Mississippi John Hurt told me of it.

Q What did he tell you?

A He told me that he had an agreement with Music Research Company -- may I complete my answer?

THE COURT: Yes, you asked for it.

Q I have a little difficulty hearing.

A. Mississippi John Hurt told me that he had an agreement with Music Research, Inc. which bound him not only to a management contract at a 50 per cent commisssion, but to a supposed recording clause and a publishing clause as well. He felt that --

THE COURT: Not what he felt. Just what he told you.

A He told me that he would like to break that contract. He enlisted my assistance.

THE COURT: When did this happen?

A This happened in the spring of 1966.

Q Did you accept his offer to or his request

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that you accede to his request to help him?

A At first not.

Q Did you everntually?

A Eventually I told him that I did not want to become involved in it, but that I would refer him to my attorney.

Q Your attorney is or was at that time?

A Sanford Ross.

Q 740 Fifth Avenue, New York, New York?

A That is right.

Q Is he in any way related to you by blood or marriage?

A No.

Q How long has he been your attorney?

THE COURT: Does it matter? The man said he was his lawyer. He sent Mr. Hurt to see his lawyer. I don't care if he knew him 20 years or two years.

Q Is he still your lawyer?

A Yes, he is.

Q I show you Exhibit 29, which is a letter, Xerox of a letter, dated May 19, 1966.

THE COURT: What is the question?

Q Did you in any way assist in the writing of that letter?

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A I believe so, yes.

Q Did you in fact type it up on your typewriter?

A I think so.

Q That is the same typewriter that typed the notes for the contract that we looked at earlier, is that right?

A I don't know.

Q Then you had Mississippi John Hurt sign it?

A I didn't have him sign it, no, sir. He signed it.

Q You typed it up.

MR. NEWMAN: I offer this in evidence, your Honor.

THE COURT: Is it on the pretrial list?

MR. DAVIDSON: Yes, sir, 29.

THE COURT: Received in evidence.

(Plaintiffs' Exhibit 29 was received in evidence)

Q At the time that letter was written you knew there was a contract that was to be broken or gotten out of, is that right?

A Yes.

Q With Music Research?

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A Yes.

Q Music Research had some ~~receipts~~ rights at least on paper, is that right?

A Yes.

Q Music Research had rights at least on paper with respect to the recording of music of John Hurt and the publishing thereof, is that correct?

A Yes.

MR. CONCAGH: I object as to what this witness' knowledge was or the legal significance.

THE COURT: He said he knew he had rights at least on paper. So I assume that is a broad enough question so he can answer.

Q Wasn't it in fact Dick Waterman who called to your attention the fact that John Hurt had a contract with Music Research?

MR. CONCAGH: I object. He is contradicting his own witness.

THE COURT: Please read rule 607 of the rules of federal evidence.

MR. CONCAGH: I understand.

THE COURT: When we recess, read the rules and you won't be making that objection.

A What is your question?

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MR. NEWMAN: I will ask the reporter to read the question back.

THE COURT: No, frame it again. We can't wait for that.

Q Was it Dick Waterman rather than Mississippi John Hurt who called to your attention the fact that there existed in the spring of 1966 a contract with respect to the recording rights between Mississippi John Hurt and Music Research?

A Dick Waterman accompanied Mississippi John Hurt on the occasion that he wrote this letter to Mr. Ross.

MR. NEWMAN: I ask the witness be directed to answer my question.

A The answer is no.

Q Mr. Solomon, the answer is no? I am sorry, I have trouble hearing you.

A Would you clarify your question, sir?

Q Rather than John Hurt, was it not Dick Waterman, prior to the date of the letter which has been passed to the jury signed by John Hurt, who called to your attention the existence of the Music Research contract?

A I don't think so.

Q You don't think so?

A I don't think so.

Q I show you Exhibit 27, a letter dated April 20, 1966 to you and ask you whether that would in any way cause you to change your testimony on this point.

A I see no need to change my testimony.

Q Does not this letter -- is not this letter dated April 26, 1966 and it says you asked if I wanted you to break the contract that exists between John and Music Research, Inc. I am enclosing a copy of it so you can look it over and make your own decision on that.

Did you get a copy of that?

A Yes, I did.

Q Therefore you knew of its existence shortly after April 20, 1966?

A Of the existence of the contract with Music Research, yes.

Q You knew its terms?

A No, I did not.

Q You had a copy of it in your possession at any rate, didn't you?

A I don't believe so.

Q Is it your testimony that no copy of the

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contract came with Exhibit 27?

A Does it so state?

Q It does so state. I am asking you whether according to your recollection a copy came or did not come?

A Perhaps, perhaps not.

Q I show you Exhibit 28, which is an undated letter to you, at least to a person named Maynard from Dick Waterman, and ask you whether that in any way causes you to change your testimony as to whether you physically received a copy of the Music Research-John Hurt contract?

A This letter states, Maynard, I wrote and mailed the letter last night --

THE COURT: Just answer the question. Do you stick to your prior statement?

A I stick to my prior statement.

Q That is you don't know whether you got the contract?

A I believe I did not.

MR. NEWMAN: Your Honor, I offer Exhibit 28 and I offer it for the limited purpose of showing the receipt of the agreement, not for its content, Exhibit 27.

THE COURT: If they are in the pretrial order, they may be offered.

(Plaintiff's Exhibits 27 and 28 were received in evidence)

THE COURT: I am afraid I am going to have to break at this hour.

Members of the jury, we will be in recess until about 10:15 tomorrow morning. Please don't discuss the case. Keep an open mind.

You may withdraw.

You may step down, Mr. Solomon.

(Jury left the courtroom)

THE COURT: I would like to see all of you in the robing room in about three or four minutes. I will send foryou in about two minutes.

(Adjourned)

TRANSCRIPT OF PROCEEDINGS BEFORE BRIEANT, D.J. DATED OCTOBER 24, 1975 362

eorm 1

MUSIC RESEARCH, INC.
vs.
VANGUARD RECORDING SOCIETY, INC., Defendant, 73 Civ. 394
vs.
HERB GART, Third-Party Defendant.

October 24, 1975
10:15 a.m.

(In open court; jury not present.)

THE COURT: As the result of an informal conference I have had with counsel it has been indicated to the Court that plaintiffs' case do not intend to play any records or tapes to the jury. Am I correct in so stating?

MR. NEWMAN: Yes, your Honor. Of course we may in rebuttal in the event there is an issue made by the defendants.

THE COURT: All right, we will be in recess for a brief period.

(Recess)

MR. VASSALLO: Your Honor, may counsel put a stipulation on the record?

THE COURT: Yes, sir.

MR. VASSALLO: Defendant Vanguard, your Honor, has stipulated to a discontinuance and dismissal with prejudice and without costs to either party of its claim, third-party claim over against defendant Gart.

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MR. CONCAGH: It is stipulated and agreed to by defendant Vanguard.

THE COURT: All right, it is stipulated and agreed that the third-party complaint against -- I take it that both defendants, Gart, Inc. and the individual defendant?

MR. CONCAGH: It was styled doing business as, but it is our intention to dismiss both Gard individually and his corporation, your Honor. Correct.

THE COURT: It is so ordered and Mr. Gart is now dropped as a party and you are released from further participation in the trial.

MR. VASSALLO: Thank you, your Honor.

THE COURT: All right, bring in the jury.

(Jury present.)

THE COURT: Mr. Solomon, come back on the witness stand, please.

M A Y N A R D S O L O M O N , resumed.

THE COURT: Good morning, members of the jury.

You may be wondering why we are starting late. All I can say to you is that you have my assurance that it is not through anybody's fault. The Court does intend to proceed as promptly as possible.

I would also inform you at this time that the third-party complaint against Mr. Herbert Gart, doing business

as Herb Gart Management, Inc. is no longer before you and will not require any decision on your part. For that reason Mr. Vassallo, who has been sitting at the counsel table here, is now no longer there and you are not to speculate about why or under what circumstances that has occurred and you will no longer be requested to decide any controversy or dispute between Vanguard Recording Society, Inc. and either Mr. Gart or his corporation.

All right. Please proceed.

MR. NEWMAN: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. NEWMAN:

Q Mr. Solomon, did you not become aware in October of 1964 that Music Research had a contractual relationship with Mississippi John Hurt?

A No.

Q Relating to recordings?

A No.

Q I show you Exhibit 16, which is in evidence. This is a document which you received. It has your inscription, "File," in the upper righthand corner, does it not?

A Yes, it does.

Q In your handwriting, correct?

A Yes.

Q Does the letter not say, "This is to advise you that neither Mrs. Louisa C. H. Spottswood nor her husband, Mr. Richard L. Spottswood" --

A This letter is not addressed to me, sir.

Q It was received by you, was it not?

A Yes, it was.

Q It says, "Copy to Vanguard Recording Society," at the bottom, does it not?

A Yes, it does.

Q "This is to advise you that neither Mrs. Louisa C.H. Spottswood nor her husband, both of whom are defendants in the subject cause of action, referring to the caption, have any rights whatever in and to or perform any part of the contract of Music Research, Inc. with John S. Hurt, also known as Mississippi John Hurt."

It goes on to say: "This is also to advise you that although Mrs. Louisa C.H. Spottswood may have physical possession of masters, mothers and stampers of the music of John Hurt and others, she does not have nor will any purchaser of these masters, mothers and stampers have any right whatsoever to produce records from them since such is an incident of the aforesaid contracts and is vested solely in Music Research, Inc. of which corporation neither Mr. or Mrs. Spottswood is an officer or employee or agent of any

kind."

Didn't you learn from that that there is in fact a contractual relationship between Music Research and John S. Hurt?

A I did not because it was not a matter of concern to me nor was the letter addressed to me.

Q Was it not a fact, however, that you were and had been in October of 1964 putting out records containing music of Mississippi John Hurt?

A The Newport recordings, yes.

Q The Newport recordings?

A The Newport recordings on which we had contracts, yes.

Q I show you just to refresh your recollection Exhibits 27, 28 and 29, about which we talked yesterday. Those being the two letters to you from Mr. Dick Waterman and the letter that Mississippi John Hurt signed on May 19, 1966, which you said you typed. After receiving a copy of the contract between Music Research and Mississippi John Hurt, as reflected in the Waterman letters, did you then take any action with respect to that contract?

A No, I did not.

Q Do you recall receiving any inquiries from anyone concerning the existence of such a contract?

A No.

Q Did you not in fact receive a letter from Mr. George Goldstein of Philadelphia, Pennsylvania, representing the Hurt estate, inquiring about the contract and asking you for any information which you might have concerning it?

A Yes, at a later date.

Q Was that not in or about August of 1966, after the dates of the exhibits before you?

A Yes.

Q Do you recall what you said to him?

A No, I don't.

Q Did you not, in fact, deny that you had any information on the management contract between Mr. Hurt and Music Research, Inc.?

A Yes.

Q Referring to a letter dated August 26, 1966, which is Exhibit 36.

MR. NEWMAN: I offer this in evidence, your Honor, and I would like to read it.

THE COURT: It is in the order?

MR. NEWMAN: Yes, sir.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 36 received in evidence.)

(Mr. Newman read Plaintiff's Exhibit 36 in

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evidence to the jury.)

MR. NEWMAN: May I pass these documents to the jury?

THE COURT: Yes.

Q In fact you did have information on the management contract between Music Research and Mr.Hurt, did you not?

A Not in the context of Mr. Goldstein's letter to me.

Q You had information concerning the contract, is that a fact?

A Not information that was relevant to his inquiry.

Q You made that determination when he asked you for information?

A I certainly did.

Q Subsequent to 1966 did you continue -- did you regard the contract between Music Research and John Hurt as being in effect and valid?

A No, I did not.

Q You regarded it as being invalid?

A That's right.

Q And of no effect whatsoever?

A That's right.

Q And since it was invalid it did not need to be broken; is that right?

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A I don't understand the question.

THE COURT: I don't either. Frame another question, Mr. Newman.

Q Did you take any steps subsequent to 1966 to attempt to break the contract between Music Research, Inc. and Mississippi John Hurt?

A No, I did not.

Q Are you certain of that?

A Yes.

MR. NEWMAN: I show you an exhibit, which, your Honor, was only received pursuant to this case and is not on the exhibit list, it is marked as Exhibit 86 and it comes from the defendant and, of course, is therefore known to them.

THE COURT: All right.

Q I show you Exhibit 86 and ask you if that is a copy of a letter which you wrote?

A Oh, yes, after the institution of the present litigation.

Q You did write this letter?

THE COURT: I thought it was written in 1971.

THE WITNESS: Yes, in 1971.

THE COURT: All right, not after the institution of this litigation. This litigation was instituted in 1973.

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Frame the next question.

MR. NEWMAN: Is this received, your Honor?

THE COURT: Yes, I will receive it.

xx (Plaintiffs' Exhibit 86 received in evidence.)

Q Mr. Solomon, did you not address your lawyer, Mr. Sanford Ross, Dear Sandy --

THE COURT: This is in evidence. You may read it to the jury. He admitted he sent the letter. You can pass it to the jury or read it to them, but don't ask him questions about a document already admitted in evidence.

(Mr. Newman read Plaintiffs' Exhibit 86 in evidence to the jury.)

Q Was that letter of authorization from Hurt to you in 1966 the one you just had in front of you?

A That's right.

Q You have to speak up so the jury can hear you.

A It was not a letter from Hurt to me.

Q Hurt to you meaning Sandy?

A Yes, correct.

Q Does this help you change your testimony as to whether or not you did take any steps subsequent to 1966 to break or attempt to break the contract between Music Research--

MR. CONCAGH: Objection to the question.

Q -- and Mississippi John Hurt?

THE COURT: I think the letter is in evidence. It shows what the man did. There shouldn't be any dispute about it. He admits it is his letter and he admits that Sandy Ross is his attorney, so let's try something that is not being disputed.

Next question, please.

MR. NEWMAN: Yes, your Honor.

Q I show you Exhibit 63 and ask you if you can tell us what that is?

THE COURT: Is it in the pretrial order?

MR. NEWMAN: Yes, it is, your Honor.

THE COURT: Offer it in evidence.

xx (Plaintiffs' Exhibit 63 received in evidence.)

Q Was Exhibit 63 prepared by you, Mr. Solomon?

A Partially.

Q Which part was prepared by you and which part was prepared by someone else?

A A good deal of the information on it was supplied by various employees of Vanguard pertaining to costs of recordings, royalty expenses, production costs. Other information was supplied by our accountant pertaining to overhead, profits and losses.

Q Was it prepared by you when or under your direction?

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MR. CONCAGH: Excuse me, your Honor, I cannot hear the witness.

THE COURT: All right, your own lawyer can't hear you. Please speak up.

Next question, please.

A It was prepared under my direction sometime last summer in response to a request from Music Research's attorneys.

Q I direct your attention to the second page, which is unnumbered, which is headed, "Direct Costs, The Last Sessions of Mississippi John Hurt." In particular to the line, "Engineering, programming, mixing, editing, 60 hours at $90." Will you tell me how you arrived at that figure?

A Yes, those are reflected on our engineering worksheets.

Q Is it your testimony that 60 hours of engineering, programming, mixing and editing was required?

A Oh, yes, that is a minimum amount.

Q Do you have those underlying worksheets?

A I believe so.

Q Were you not subpoenaed to bring them into the court?

A Not to my knowledge.

MR. NEWMAN: I believe that is covered by the

subpoena.

MR. CONCAGH: I object to that comment.

THE COURT: Yes, the jury will disregard counsel's comment. If they are covered by the subpoena, Mr. Concagh, produce them, please.

MR. NEWMAN: I ask for their production.

MR. CONCAGH: Do we want to have this colloquy before the jury?

THE COURT: I want to move this trial along and I will waste ten minutes if I send this jury out of the courtroom. You have the subpoena in front of you. If they are covered, hand them up.

MR. CONCAGH: I have given Mr. Davidson the file. You have it.

THE COURT: Mr. Davidson, please come forward with the file.

Q Will you show us within the file the documents in response to the subpoena where the records which underlie this particular entry are?

A I have not seen any subpoena. I don't know what reference --

THE COURT: He has asked you a question. He has asked you to find in those papers produced from your records which papers there are that substantiate this engineering

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cost figure?

THE WITNESS: They are not present.

Q Did you cause a diligent search of your corporation's records to be made pursuant to the subpoena?

A No, I did not.

THE COURT: You did not?

Q You did not?

THE COURT: He says he did not, let's go on to the next question.

Did you receive a subpoena?

THE WITNESS: No, I did not.

Q Did your lawyer receive a subpoena, to your knowledge?

THE COURT: How would he know? Let's go on to something else.

Q I ask you the same question with respect to the engineering, programming, mixing and editing entry of 40 hours at $90 under the third page headed, "The Best of Mississippi John Hurt." Do you have in court here today the records underlying that entry?

A No, I do not.

THE COURT: Hand up the original of the subpoena, please.

MR. DAVIDSON: Your Honor, I believe I served the

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original. I am sorry I misplaced my copy.

THE COURT: I want the original, the one that is filed with the Court.

All right, I will take care of it when the recess comes.

Q This document purports to be what, Mr. Solomon?

A This document purports to be a sketch of the income and costs pertaining to the last two recordings that we issued by Mississippi John Hurt, "The Last Sessions" and "The Best of Mississippi John Hurt."

Q What do you mean by "sketch?"

THE COURT: Is it on the pretrial list?

What is the number of the paper?

MR. NEWMAN: 63.

THE COURT: Offer it in evidence.

THE CLERK: It has been received.

THE COURT: It speaks for itself.

MR. NEWMAN: I am afraid it doesn't speak for itself entirely. He says it is a sketch. I would like to know what he means by "a sketch."

A Obviously it is not an accountant's statement in any kind of final form.

Q Is it intended to be accurate or not?

A It is intended to be accurate within reasonable

limits, yes.

Q What are those limits?

A Well, for example, on the very first item, the cost of pressings during the period in question ranged from 72 to 82 cents. We arrived at an average price of 70 cents without consulting the original documents on the reasonable assumption that approximately half of the recordings were sold prior to certain price increases and our pressing costs.

Q Are there other estimates contained in this document?

A Yes, and it so states, sir.

Q Where does it so state?

THE COURT: It is in evidence. It speaks for itself what it states. Please move along. If you want to show the document to the jury, you can, but let's move along with this trial.

Q This purports to be a sketch, as you say, of the income received from the two -- the third and fourth Mississippi John Hurt records?

A That is right.

Q It is based on estimates?

THE COURT: He told us that.

A Yes, sir.

Q Your testimony is that this document says that it

is based on estimates?

THE COURT: He told us that, too.

The jury heard this witness say that they represent estimates. Please let's go forward.

Q Does not the document say that the allocation for advertising and promotion is an estimate and not that the entire document is an estimate?

A You didn't ask me that question, sir. Yes, that does say that and it also says that this is an estimate because it shows a range of prices.

Q You are pointing to two entries under direct costs on page 2?

A That is correct. On page 3 as well.

Q Are there any other estimates other than those we just referred to?

A Yes, the entire page 4 is devoted to estimates.

Q What about pages 2 and 3. Are there any estimates on those pages?

A I have already answered the question.

THE COURT: Answer it again so maybe we can understand it.

A Yes, the price of the pressings.

Q Other estimates?

A The price of the jackets is an estimate.

Q I am referring to other entries. You have mentioned those?

A Apart from those that we have mentioned?

Q Yes.

A I believe that the entry for cost of defective records and inventory shrinkage is also an estimate.

Q Made by whom?

A By our accountant.

Q What about the figure for engineering, programming, mixing and editing; is that an estimate?

A No, it is not.

Q What about promotion and advertising?

A It so states.

Q That is an estimate?

A Yes, sir.

MR. NEWMAN: I hand this to the jury, your Honor.

THE COURT: All right.

Q Did you understand Mr. Hoskins to be the personal manager of Mississippi John Hurt?

A Yes, sir.

Q What is your understanding of the term "personal manager?"

A Personal manager is one who normally attends to the bookings and arranges for the general welfare of his

artist.

Q Is that as opposed to a business manager?

A Yes.

Q Is a business manager one who attends primarily to the accounting and the business aspects of an artist's career as opposed to obtaining bookings and other engagements?

A Normally. In many instances the business manager is also the booking agent.

Q So a personal manager attends also to obtaining recording contracts; is that correct?

A Yes.

MR. NEWMAN: No further questions, your Honor.

THE COURT: All right. Do you want to cross examine him?

MR. CONCAGH: No thank you, your Honor.

THE COURT: You may step down, sir.

(Witness excused.)

THE COURT: Call your next witness, please.

MR. NEWMAN: Herbert Gart.

H E R B E R T G A R T , called as a witness by the plaintiffs, having first been duly sworn, testified as follows:

THE COURT: Mr. Newman, you may examine him.

MR. NEWMAN: Thank you, your Honor.

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DIRECT EXAMINATION

BY MR. NEWMAN:

Q Mr. Gart, where do you live?

A I live in Salisbury, Pennsylvania.

Q Is that in Bucks County?

A Yes.

Q Where do you work?

A I work in New York City.

Q How old are you?

A 37.

Q What is your occupation?

A I am a personal manager and I have a recording production record company.

Q Personal manager of whom or what?

A Of various musical artists and actors.

Q How long have you been in the music business, Mr. Gart?

A 14 to 15 years.

Q What were you doing before you had your present occupation?

A I went to college and owned a donut shop.

Q Have you been on your own since then?

A Yes.

Q Did there come a time when you made a suggestion

to Tom Hoskins that Vanguard Records might be interested in recording the music of Mississippi John Hart?

A Yes.

Q Was it your suggestion?

A Yes.

THE COURT: Can you all hear him, members of the jury?

JUROR NO. 1: No.

THE COURT: Please speak up.

THE WITNESS: All right.

Q Did Mr. Hoskins give you any authority to conclude a deal with Vanguard on behalf of Music Research and Mississippi John Hrt?

MR. CONCAGH: Objection.

THE COURT: Sustained.

Q Did Mr. Hoskins authorize you to make contact with Vanguard Recording Society?

A Yes.

Q Were you aware at that time of an agreement between Mississippi John Hurt and Music Research?

A I was aware of it.

Q Did Mr. Hoskins give you any authority to conclude a deal between Vanguard Recording Society --

MR. CONCAGH: Objection.

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THE COURT: Yes, I already ruled on the prior objection.

MR. NEWMAN: I tried to lay a foundation.

THE COURT: That is not the way to do it, Mr. Newman, as you well know.

Q Did you then go to Vanguard Recording Society?

A Yes.

THE COURT: Just so that my ruling is clear, he may be asked about conversations he had with Mr. Hoskins. He may be asked about written agreements or documents exchanged between himself and Mr. Hoskins. He may be asked about anything he did or said, but he certainly cannot be asked to give a legal conclusion.

MR. NEWMAN: I understand, your Honor.

THE COURT: Please continue.

Q In your conversations that you had with Mr. Hoskins regarding the approaches to be made to Vanguard Recording Society, what, if anything, was said by Mr. Hoskins in the way of instructions to you as to how the contract was to be concluded?

THE COURT: First I would like to fix the time and place of the conversation. Who was present. If there is more than one conversation, I will take them one at a time.

Q Did any conversations covering that topic take place between you and Mr. Hoskins?

A Yes.

Q How many?

A Once or twice. I am not sure.

Q When did they take place?

A During the very beginnings of discussing an agreement with Vanguard Records.

Q I am sorry, Mr. Hart. I cannot hear you.

A During the first part of talking to Vanguard Records. I don't know the dates.

Q In late 1965 or thereabouts?

A Yes.

Q That was the first conversation?

A Pertaining --

Q To the subject I mentioned in my earlier question.

A Yes.

Q Was there or was there not a subsequent conversation?

A Yes.

Q When did that take place?

A When I received a draft contract from Vanguard Records.

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Q In the first of these conversations, what instructions, if any, did Mr. Hoskins give to you --

THE COURT: What did you say to him and what did he say to you with reference to Vanguard Recording?

MR. NEWMAN: I am limiting it really to the instructions --

THE COURT: I am not going to take it because instructions imports into the question a legal conclusion.

Q What did Mr. Hoskins say to you about who should sign and conclude the deal with Vanguard and how it should be done, if anything?

A As to who should sign and conclude the deal, nothing was said.

As to how it should be gone about, it was stated that I should try to get a contract with Vanguard Records. It was a continuation of our previous efforts to get a major recording agreement for John Hurt.

Q Was there anything said in the second conversation as to who -- let me first finish with this first one. Was there anything said in the first conversation by Mr. Hoskins to you as to who was to sign the final agreement when it was prepared in final form?

MR. CONCAGH: I object as asked and answered.

THE COURT: In the first conversation?

MR. CONCAGH: Yes, sir.

THE COURT: I will let it be answered.

A No.

Q I am sorry?

A No.

Q What about in the second conversation?

A In the second conversation we had a draft in front of us which contained Mr. Hoskins' signature as well as mine and John Hurt's.

THE COURT: By that you mean you had a paper that had a signature let set aside for his use?

THE WITNESS: I am sorry, a signature line. It was then, we went through the entire agreement including the fact that he had to sign on behalf of Piedmont.

Q Did you and Mr. Hoskins in that meeting discuss when and how the signatures were to be affixed to the final contract when it was prepared?

A No.

Q In either of these conversations did Mr. Hoskins say to you that you were authorized to execute an agreement on behalf of Music Research with Vanguard?

MR. CONCAGH: Objection.

THE COURT: I think he is asking for specific words, not for a legal conclusion. Did he ever say that to

you. I will let him answer that.

MR. CONCAGH: Withdrawn.

A No.

THE COURT: You have been sitting in the courtroom, have you, Mr. Gart, during the entire trial?

THE WITNESS: Yes, except for an hour yesterday morning.

Q I show you a copy of a deposition in this case --

THE COURT: No, no. Mr. Gart, do you recall being examined under oath at the deposition and being asked this question and giving this answer.

Will you give the page number so Mr. Concagh can check it out.

MR. NEWMAN: All right, I will do it that way.

Q At the continued examination of you in connection with this case on August 30, 1974, at page 11 of the transcript, line 10, were you asked this question and did you give this answer:

"Q At any time from the date you first informed Tom Hoskins of the possibility of a Vanguard Recording contract to the time the contract was apparently executed, that is, on or about say up to January 1, 1966, did Tom or anyone at Music Research ever authorize you whether in writing or verbally to execute any such agreement on behalf of Music

research?

"A No, nor did I."

A Isn't that what I answered before to your previous question, that I did not get authorization to sign on behalf of Music Research. I thought that was the question you asked me when I said no.

THE COURT: Do not argue with the witness. Frame another question.

Q I am showing you, Mr. Gart, Exhibits 56, 57 and 58 in evidence, which are three versions of the Vanguard-Hurt agreement. You notice on two of those the place for the signature of Tom Hoskins is cut out.

MR. CONCAGH: Your Honor, there was a comment made by counsel that there are three versions of the Vanguard agreement. I would move to strike that.

THE COURT: Frame a new question. I will sustain the objection to the question.

Q You will notice that on the three exhibits before you, 56, 57 and 58, that on two of them the place for the signature of Tom Hoskins has been cut out?

A Yes.

Q Did you do that?

A No.

Q Do you know who did?

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A No idea. It doesn't make any sense at all.

THE COURT: At the time that you signed, was that signature line still there?

THE WITNESS: Yes, it was.

Q What did you do with the contract after you signed it?

A I signed the contract at the same time that John Hurt signed the contract.

Q What did you do if anything with it after that?

A I was at Vanguard's offices at the time in their building.

Q I asked you what you did.

A I then took the contracts with me back to my office.

Q Did you keep them there or did you do something else with them?

A I kept them there.

Q Obviously they are not there now, so what did you do after that?

A I waited quite sometime for Tom to come back from whatever field trip he was on for him to sign as well, and at the end of December when I had not yet seen him, I sent the contracts back to Vanguard for Vanguard to collect his signature whenever it was that he showed up because the

matter had to move forward for John to get his money and start making records.

Q Did you on or prior to the signing by you of these documents have any conversations with Mr. Solomon in which the existence of an agreement between Music Research and Mississippi John Hurt was touched upon?

A Could you ask me the first part of that. The time period again? Prior to when?

Q I said on or prior to the time when you put your signature on these documents that you have before you.

A Yes.

Q How many such conversations did you have?

A Two, possibly three.

Q When did those take place?

A The first took place when Tom Hoskins, John and I sat down with Maynard Solomon to discuss the possible terms of the agreement. At that time, as he did before anyway, he was told what he already knew that John Hurt was represented by Tom Hoskins.

Q On the question of whether there was any mention of the existence of an agreement between Music Research and John Hurt?

A No, that was an accepted point.

Q That was what?

A That was an accepted point; that John Hurt was represented by Tom Hoskins. There was never any question about that to anybody.

Q When was the next such conversation. You mentioned there were two or three?

A The second was relative to the rider attached. After getting their draft copy I had to make changes in the way they worded what Piedmont Records would or would not agree to do as far as not releasing further product during a certain period of time.

Q When did this conversation take place?

A It took place, I am pretty sure, on the telephone.

Q Between you and --

A -- and Maynard Solomon shortly after I received this draft.

THE COURT: When would that be in years and months?

THE WITNESS: That would be early December, the first couple of days, I suppose.

Q Of 1965?

A Yes.

Q What was said, if anything. You did say something was said in that conversation concerning the management or the agreement between Music Research and John Hurt?

A Only relative to the fact that, which was as given

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from the beginning, that Tom Hoskins was Piedmont Records and that Piedmont Records had agreed, had warranted that they would not release any recordings on their own label during the term of the agreement and for a certain period of time afterwards, after which, of course, they could then release more John Hurt product. It was brought up in that context only.

Q Was there a third conversation on this subject between you and Mr. Solomon?

A I don't really know. I can't remember whether there was or not. There may have been.

Q Mr. Gart, in your experience in the music business if someone owns an exclusive contract with an artist, would the signature of the person holding those recording rights also have to appear on the recording agreement?

A I would think so.

Q Are you sure about that?

A Most of the time. You know, I don't know that there are any hard and fast rules about that.

Q I am referring you to --

A But I would think so.

Q I refer you to your deposition, the second session, page 64:

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"Q In your experience in the music business, if someone holds an exclusive contract would the signature of the person holding his recording rights also have to appear on a recording agreement?

"A Sure."

Were you asked that question and did you give that answer?

A Yes.

THE COURT: Did you attend this recording session in early February of 1966 where Hurt performed for Vanguard in New York City?

THE WITNESS: I did attend the first recording session. I am not really sure of the date of it, but I was there.

THE COURT: When is your best recollection of the date?

THE WITNESS: A little bit later than that.

THE COURT: Later than February of '66?

THE WITNESS: Possibly. I remember the weather wasn't that cold so I am not sure.

THE COURT: That was in a hotel in New York City?

THE WITNESS: Manhattan Towers ballroom is the recording facilities that Vanguard uses most of the time.

MR. NEWMAN: I have no further questions of this

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witness, your Honor.

MR. CONCAGH: I have no questions at all of this witness, your Honor.

THE COURT: All right, Mr. Hart, you may step down.

(Witness excused.)

MR. NEWMAN: Your Honor, at this time I should like to read to the jury certain admissions that have been made by the failure to respond to a request to admit.

THE COURT: Before you go to that, can you finish up with the live witnesses?

MR. NEWMAN: I have no further live witnesses.

THE COURT: You may read the admissions.

MR. POWELL: Your Honor, we have two expert witnesses. One flew in from California.

MR. CONCAGH: I object to colloquy.

THE COURT: Yes, I don't take that colloquy in front of the jury. If you have any more live witnesses, put them on. The jury will disregard comments of counsel.

Counsel, approach the side bar.

(At the side bar.)

THE COURT: Where are these so-called live witnesses and why aren't they here?

MR. NEWMAN: Your Honor, this is a very simple

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matter. Mr. Powell did not know that I reached the conclusion last night that their testimony at this point would not be needed by the plaintiffs and we didn't intend to call them. We intend to use them for rebuttal because we intend -- the defendant plans to call expert witnesses and we will use them for that.

THE COURT: I am going right forward, gentlemen.

MR. POWELL: I am sorry, your Honor.

(In open court.)

MR. NEWMAN: Shall I mark this document or read it?

THE COURT: If it is on file in the case, you may read it.

MR. NEWMAN: It is a copy of one that is on file.

THE COURT: Mark it for identification.

xx (Plaintiffs' Exhibit 104 marked for identification.)

THE COURT: Do you want to show it to Mr. Concagh so there is no question about it?

MR. NEWMAN: Yes.

MR. CONCAGH: Could we have a discussion at the side bar?

THE COURT: It is either a proper copy or it is not. If it is not, I will send for the original.

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MR. CONCAGH: I will go along on the representation that it is.

THE COURT: All right.

Members of the jury, these are requests for admissions and the law permits a party to a civil suit to write a notice to the attorney for the opposing party in the suit and ask him to admit certain facts. If he doesn't respond to that notice, then those facts are deemed admitted for the purposes of this lawsuit and you can treat an admission of that sort just the same as if a witness that you believe were to go on the stand and answer questions and give the same information as is contained in the notice to admit.

MR. NEWMAN: Thank you, your Honor.

(Mr. Newman read Plaintiffs' Exhibit 104 for identification to the jury.)

MR. NEWMAN: This is the document that has been admitted in evidence.

THE COURT: All right, they are all in evidence.

MR. NEWMAN: I just wanted to show them to the jury.

THE COURT: What are you doing with Exhibit 91 for identification? My bench notes do not show that I made any ruling about that.

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Do you have anything else?

MR. NEWMAN: I also offer it in evidence, your Honor, and also 92.

THE CLERK: 92 was received.

MR. DAVIDSON: Also Exhibit 90.

THE COURT: You will have to check with the clerk.

MR. NEWMAN: We offer 90, 91 and 92, your Honor.

THE COURT: Any objection? All right, they will be received in evidence.

xx (Plaintiffs' Exhibits 90, 91 and 92 received in evidence.)

MR. NEWMAN: We also offer the recently subpoenaed material which has been marked as Exhibit 63 and is a business record of Vanguard Recording Society. I will show it to Mr. Concagh.

MR. CONCAGH: No objection to all the files we produced.

THE COURT: Received.

xx (Plaintiffs' Exhibits 63-A received in evidence.)

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THE COURT: Please proceed.

MR. NEWMAN: I have nothing further, your Honor. The plaintiff rests.

THE COURT: Both plaintiffs rest.

MR. CONCAGH: At this juncture the defendant Vanguard has a motion.

THE COURT: Yes, I will hear your motions in the absence of the jury.

Members of the jury, will you retire to the jury room, please, and we will take about a five-minute recess.

(Jury left the courtroom.)

THE COURT: I will resume with you in about five minutes.

(Recess.)

(In open court - without the presence of the jury.)

THE COURT: May we go back on the record, gentlemen.

You may make your motion, Mr. Concagh.

MR. CONCAGH: Thank you, your Honor.

Your Honor, I will hopefully cut to the core the basis of my motion by not referring unless absolutely necessary, to some of the facts and testimony. I know your Honor has followed it.

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THE COURT: I would like you to concentrate on the fraud claim.

MR. CONCAGH: Yes, sir.

The defendant Vanguard Recording Society moves to dismiss the complaint of the plaintiff, Music Research, and dismiss its various causes of action. Dismissing --

THE COURT: You're moving for a directed verdict under Rule 50 of the Federal Rulesof Civil Procedure.

Please tell me about the fraud claim because I think you are on pretty good ground on all the rest of them.

MR. CONCAGH: There has been nothing shown during the testimony of this trial that any fraud was committed upon the plaintiffs in the action. At best, the testimony adduced that the plaintiffs' agent, Herb Gart, negotiated with Vanguard Recording Society on behalf of his principal. It has been uncontradicted testimony. Indeed, the testimony of the plaintiff, Tom Hoskins, has been that Herb Gart was the agent of Music Research to negotiate and conclude a deal for Music Research.

At best there have been some fleeting references in this trial to some letters from an attorney in New York, having to do with a Mississippi John Hurt contract that the plaintiffs claim to have through that exclusive ownership of the rights to the recording rights of Mississippi John Hurt.

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The proof in quantum of the plaintiff fails to establish any fraud perpetrated by any individuals either directly or indirectly associated with the defendant Vanguard Recording Society in this action on the facts which I won't burden your Honor with, the defendant Vanguard, pursuant to Rule 50, moves for a directed verdict on the cause of action based upon fraud specifically because the burden of proof has not been carried by the plaintiff.

THE COURT: If the testimony of Mr. Hoskins is believed with respect to his conversation with Mr. Solomon at the recording session, which he places in February of '66, and which the witness Gart says he thinks was somewhat later than that, although obviously not much later, wouldn't that constitute a good fraud claim? If you assume that after the conversation Mr. Hoskins in company with Hurt apparently also Mr. Gart attended this five or six hour recording session and acquiesced in everything that was going on there.

It is a question for the jury whether he could reasonably rely on that representation.

MR. CONCAGH: Your Honor, I feel that that is insufficient to carry the burden of proof on a claim of fraud.

THE COURT: If they believe his testimony, the jurors.

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MR. CONCAGH: Assuming the jury believe everything that Mr. Hoskins said and disbelieved everything that Mr. Solomon said, I feel the record fails to establish any fraud perpetrated upon anybody. Indeed, the record supports that the fraud, if any, was committed upon the principal by his own agent who is cloaked with authority and I have some New York case law --

THE COURT: The agent said he did not cut the signature line off and he doesn't know who did and when he left it at Vanguard it was his intention that Mr. Hoskins was going to sign it. It was just apparently inconvenient to get ahold of him.

The jury can believe that. That is the testimony of an impartial person because Mr. Gart is out of the case and he cannot be liable now, the plaintiff has discontinued as to him and so has your client.

I understood him to tell the jury that he doesn't know who clipped the signature line off and when he left it at Vanguard's it was the intention that it was going to be signed by Mr. Hoskins as soon as Mr. Hoskins could be located and made available. That is what the man told us this morning.

MR. CONCAGH: Again, your Honor, assuming that interpretation of the testimony were to be made by the jury, there is no finding of any proximate cause or any damage to

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the plaintiff Music Research as a result.

Indeed, all the testimony supports a finding that Music Research cloaked with apparent authority his agent Herb Gart so they have no damage nor is there any proximate cause.

If indeed they were to find frauds in that specific instance, there is no damage nor is there any proximate cause to any damage.

THE COURT: All right. Let me hear from Mr. Newman briefly, please.

MR. NEWMAN: Mr. Davidson will argue this, your Honor.

THE COURT: All right.

Mr. Davidson, what do you say the representation is that was made?

MR. DAVIDSON: There are several things, your Honor

In the first place, there are certain representations that were made and there are also certain concealments that occurred. A cause of action in fraud can also be grounded upon concealment of material fact.

THE COURT: I don't see that here. There is no fiduciary duty that I can find between Vanguard and your client.

MR. DAVIDSON: Your Honor, it is our position that

when Maynard Solomon knew that Tom Hoskins was involved in these negotiations and there is testimony from Mr. Gart, there is testimony from Hoskins, that a four-person meeting occurred prior to the beginning of all this, when he puts the place on the contract for Tom Hoskins to sign his name, they become intimately related contracting parties and when he then clips one of the signatures off, I think he is under a duty to reveal the fact that he signed that agreement without approval or permission --

THE COURT: I reject that. I find no duty on Vanguard, which could be founded on an omission to disclose something. I think you will have to come and tell me about the affirmative representations that you say were made that were knowingly false and reasonably relied upon by Music Research.

You said there were several, so forget the omissions and let's talk about the representations. If you could sue on omissions we wouldn't need Rule 10b-5 that keeps this court so busy, so let's stick with the representations.

MR. DAVIDSON: Your Honor, there were several conversations that Hoskins testified to between himself and Maynard Solomon after the signing of that contract, I believe Tom Hoskins testified that at the recording session, which he

attended, he asked Maynard Solomon for a copy of the contract.

Maynard Solomon replied something to the effect that, "Oh, don't worry, they're coming."

On several occasions after that Tom Hoskins testified that he telephone the offices of Vanguard Recording Society. My recollection is now unclear as to whether he spoke personally with Mr. Solomon at that time, but I know he did testify that he left messages to return calls with the message "Where is the contract?" and no reply was had to that.

Also, your Honor, we would allege that the very act of clipping constituted a misrepresentation upon which a fraud claim could be grounded.

THE COURT: He never knew it was clipped until after the lawsuit, isn't that so?

MR. DAVIDSON: We would claim that would bear on the statute of limitations problem.

THE COURT: The clipping may be evidence from which the jury may be able to draw an inference adverse to Vanguard since the testimony shows that Mr. Gart didn't clip it and it was in the possession of Vanguard until the controversy erupted, so the jury might infer that they clipped it off, but that would only be relevant on their state of mind. I wouldn't find the act of clipping it off evidence of any

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fraud.

I think that perhaps the statement made at the recording session might be sufficient. Is there anything else that you're relying on because I am going to narrow this case so we know what we are trying.

MR. DAVIDSON: I believe there was testimony, your Honor, to the effect, and I would have to check my notes on this, that Maynard Solomon may have been asked on more than just that one occasion for a copy of that contract, either face to face or by telephone by Tom Hoskins.

THE COURT: Asking wouldn't be meaningful. It is his response that would be meaningful.

MR. DAVIDSON: The response, of course, would be the meaningful event upon which an act would be grounded.

THE COURT: Tell me about Adelphi Records. What possible cause of action or claim has been proved in their behalf?

MR. DAVIDSON: Your Honor, there is some authority and as provided in my memorandum of law in opposition to the defendants' motion for summary judgment --

THE COURT: You can't go on that. All I held in my summary judgment decision was that the parties were entitled to their day in court. Now that they have had that day, summary judgment motion in this court does not state law

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of the cases.

MR. DAVIDSON: There is some authority, your Honor, that a fraud committed by one party against another may also be sued upon by a third party if it is reasonable to assume that the party who defrauded should have known or should reasonably have known that third parties would rely upon certain representations.

THE COURT: I wouldn't see that present on any of the facts of this case at all. The dates are wrong.

The contract with Adelphi occurred after John Hurt was dead and after this recording session which had taken place in February or let us say even March or April of 1966.

MR. DAVIDSON: It seems to me, your Honor, I would like to place this on the record, it might be reasonably inferred from the evidence that an individual in the music business knows that someone who holds the exclusive recording rights to a popular artist, is likely to contract with others for the putting out of the material.

THE COURT: It all goes back to the fact that ADelphi came into the picture whenever it occurred after the contract Music Research and Vanguard was an established fact, at the time Adelphi contracted with Music Research. I find that any reasonable juror acting reasonably, must conclude

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that the tapes which Vanguard presently had had already been cut by Mississippi John Hurt.

Furthermore, that the contract which had been delivered to Vanguard had already been delivered and whatever Mr. Gart did, acting under apparent or actual authority, he had done and the jury, except for the fact that the last two albums hadn't been released and except for your possible claim that Music Research didn't know Vanguard purported to have the right to make more than two albums, whatever had been done all occurred before Adelphi acquired any rights whatsoever on the situation of John Hurt or his music.

I would further say that the knowledge of Gart would be imputed to Music Research under the record here because when the contract with Vanguard was delivered and before the signature line was cut off of it and all of the evidence in this case shows that it provided for more than two. It provided for a possibility of more than two so that I will grant the motion for a directed verdict as to all the claims asserted by Adelphi Records.

I will go further and state with respect to the claims of Music Research, Inc., I find no basis for any claim of intereference with contractual relationships. I think that any reasonable juror must, on the evidence of this case, find that Mr. Gart or his corporation at the very least,

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had apparent authority.

The admissions of the principal officer and sole shareholder, as I understand it, of Music Research, Inc., are extremely compelling evidence in this case and he is bound by his testimony given on the stand in this case which conclusively shows at least apparent authority on the part of Gart and probably actual authority. I note also and I have been informed, that he made a claim against Gart and discontinued it with prejudice.

If there was any breach in the relationships here, it would have to have been by the agent and I think he recognizes there was none. I do not make a ruling as to what Gart's actual authority was. I think perhaps the jury may reach different conclusions on that, but he certainly had apparent authority.

Now, that being so, the interference with the contract with Hurt did not occur until after the contract between Music Research, the one with the signature clipped off, and Hurt and Vanguard had been delivered and substantially performed because practically all of the recording had been done, as testified to by Mr. Hoskins in February of '66 before the Sanford Ross letter.

Also, I would say I see no claim of unjust enricment between the contracting parties and if they were

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operating pursuant to this contract, as the plaintiff's attorney conceded on the record in this case with one or two minor exceptions, which I think I rejected as being unfounded, there cannot be any unfair competition.

I do think you have a fraud claim which is sufficiently colorable so that the defendant must go forward with respect to it and as to that particular part of the motion, I am denying the motion.

In all other respects, the motion is granted.

MR. DAVIDSON: Your Honor, may I make a statement for the record?

THE COURT: Indeed, certainly.

MR. DAVIDSON: Also in argument in support of your reconsideration on the unjust enrichment, tortious interference and the unfair competition claims, this record is replete with facts contradicting, contradictory facts that must be determined by the trier of the fact with respect to the actual authority. Tom Hoskins testified --

THE COURT: Yes, but the man has apparent authority, that is enough. If he excedes his apparent authority, your answer is sue the agent. For some mysterious reason, you haven't been willing to do that.

MR. DAVIDSON: Your Honor, Tom Hoskins on the issue of apparent authority was that he stated in a meeting --

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THE COURT: You don't have to review it with me. I regard it as conclusive. He sat here and he gave away the case with his own testimony.

MR. DAVIDSON: Your Honor, he said that he told Manny Solomon and that Manny Solomon knew that Music Research was under an exclusive recording contract prior to the signing of that contract.

THE COURT: There is nothing in the contract by which any benefits flow to Music Research.

MR. DAVIDSON: But that isn't the operative fact. The operative fact is that Maynard Solomon knew prior --

THE COURT: I think you have a good fraud case or good enough to go to the jury on. I decline to hear any more argument on these motions.

Let's go forward with the fraud case and see what they say.

MR. DAVIDSON: I just bring to the Court's attention just one case in this matter at least with respect to the unfair competition claim.

The Metropolitan Opera Association, Inc., versus Wagner Nichols Recorder, Corp. 199 Misc. 786. It was affirmed 279 Appellate Division 632.

Your Honor, I believe that case supports the claim for unfair competition. I believe the testimony

creates issues of fact --

THE COURT: Time is wasting and I want the defendant to go forward with his case. I have made my ruling.

MR. CONCAGH: Your Honor, may I have thirty seconds? It is on the statute of limitations on the fraud claim. I would like to cite your Honor one case.

THE COURT: That is a fact question, isn't it, when did he discover that this had been done?

MR. CONCAGH: The testimony is that Sanford Ross wrote a letter in June of 1966 to Mr. Hoskins. It was admitted that Mr. Hoskins knew if any interference, if any fraud was committed upon Music Research it was done at latest in June of 1966.

THE COURT: That's silly, Mr. Concagh, and you know it. I have plenty of testimony here to the effect that he claims he didn't know until the other two albums, until the third album was out on the market.

He says that he received this letter from Sanford Ross and that he asked Sanford Ross to document the authority and that he asked Hurt and Hurt said, "No." The jury is entitled to believe all that so let's not waste time.

Bring in the jury. Go forward with the defendants case.

MR. DAVIDSON: Just let me be heard briefly.

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THE COURT: You and your partner Mr. Newman and your adversary Mr. Concagh has dragged this trial out unmercifully. I wonder if any of the three of you know how many pauses have occurred while some lawyer has been framing a question.

What else is it you want to say?

MR. DAVIDSON: The unjust enrichment claim that we will allege and we ask your Honor to reconsider on the basis of the fact that the third album was admittedly not recorded in the studio and therefore was not embraced within the terms of the Vanguard contract. The signing of the Vanguard contract in 1965 did not terminate the Music Research management contract which could have run concurrently.

THE COURT: I have Mr. Newman's concession on the record and John Hurt had the right to record it in any kind of a place he wanted to work in. That was for his benefit. They recorded it in a non-studio facility, that is trivial and irrelevant.

MR. NEWMAN: I don't recall making that concession, your Honor.

THE COURT: The record will show. I am going to try this case. Both of you gentlemen sit down. Bring the jury back in and the defendant will go forward on the fraud.

(In open court - jury present.)

THE COURT: Members of the jury, as you understand at this point the plaintiffs have rested their case.

The case of the plaintiff, Adelphi Records, Inc., is no longer before you for your decision. You are not to speculate or wonder as to why I have made any ruling with respect thereto.

The case of Music Research, Inc. remains before you for your decision. With respect to that case, the only elements of the case which you are asked to decide are those claims founded on fraud.

If you will remember, when the trial began and the opening statements of the attorneys it became clear that there were four separate theories asserted in the case. They were a claim of fraud, a claim of unfair competition, a claim of interference with contract and a claim of unjust enrichment.

At this point I have made another ruling and you are now continuing to try that portion of the plaintiff, Music Research, Inc. claims which are founded upon a claim of fraud.

The rest of the matters are no longer before you. Again, as I said earlier, when I have discussed such matters, you are not to speculate about the reasons I may have for making the ruling which I have made and it has not bearing

upon the matters which are left before you for your own determination as jurors.

All right, Mr. Concagh, you may go forward in behalf of the defendant.

MR. CONCAGH: Thank you.

Mr. Solomon, will you take the stand.

M A Y N A R D S O L O M O N, CALLED as a witness by the defendant Vanguard, having been previously duly sworn, resumed the stand and testified as follows:

DIRECT EXAMINATION

BY MR. CONCAGH:

THE COURT: All right, the record will show that Mr. Solomon has previously been sworn in the case. You understand that, don't you?

THE WITNESS: Yes, I do.

Q Mr. Solomon, did you have a conversation with Mr. Tom Hoskins at the Vanguard recording session of Mississippi John Hurt in the spring of 1966?

A I believe so.

Q Would you tell us what the conversation consisted of?

A It concerned the recording of material that had previously been released by Piedmont Records at that recording session.

Q Was there any discussion in that conversation about the contract form?

A No, there was not.

Q Was there ever any further conversation between you and Mr. Hoskins about a contract?

A Never.

Q Did your secretary ever tell you that Mr. Hoskins tried to reach you during the years 1966 through 1970?

A No.

MR. NEWMAN: Objection.

THE COURT: Overruled.

Q Did you make inquiry of your secretary?

A Yes, I have.

MR. CONCAGH: I have no further questions, your Honor.

THE COURT: You may cross examine him.

Do you know how this paper had the bottom end of it cut off?

THE WITNESS: I don't.

MR. NEWMAN: I have no questions, your Honor.

THE COURT: All right, you may step down.

THE WITNESS: I can say something about it.

THE COURT: Don't volunteer information.

MR. CONCAGH: I have a further question.

THE COURT: All right.

BY MR. CONCAGH:

Q Mr. Solomon, when you received the contract from Herb Gart, had it been clipped when you received it?

A Yes, it had.

MR. CONCAGH: I have no further questions.

THE COURT: You did receive it from Mr. Gart?

THE WITNESS: Yes, under a covering letter of December 30, 1965.

THE COURT: It came to you in the mail?

THE WITNESS: It came to me in the mail with a request to return two copies.

THE COURT: All right.

MR. NEWMAN: May I ask a question?

THE COURT: Yes, sure.

CROSS EXAMINATION

BY MR. NEWMAN:

Q When you received the contract from Mr. Gart, it was clipped?

A That's right.

Q Did you call Mr. Gart and ask why it was clipped?

A I asked why Mr. Hoskins' signature was not present.

Q You called Mr. Gart and asked him that question?

A Yes, I did.

Q What did he say?

A He said that Tom Hoskins was not available to sign the contract.

Q Did he say that he had clipped it off?

A No, he did not.

Q Did he say how it had been clipped off?

A No, he did not.

Q Did he say he mailed it to you clipped off?

A No, sir.

MR. NEWMAN: No further questions.

THE COURT: All right.

(Witness excused.)

MR. CONCAGH: The defendant rests its case.

MR. NEWMAN: Your Honor, I would like to recall Mr. Gart for a brief question.

THE COURT: All right, Mr. Gart is being called as a rebuttal witness.

H E R B E R T G A R T , resumed the stand in rebuttal, having previously been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NEWMAN:

THE COURT: Mr. Gart, I give you the same instruction I just gave the prior witness. You do understand that you have already been sworn in this case.

THE WITNESS: Yes.

THE COURT: All right.

Q Mr. Gart, you have just been sitting in the courtroom when Mr. Solomon testified a few minutes ago. When you sent the contracts in question to Mr. Solomon, was the place for the signature of Mr. Hoskins clipped off?

A No.

Q Did you have a conversation with Mr. Solomon after the receipt of those documents concerning the absence of a signature space for Mr. Hoskins?

A We had a conversation concerning the absence of Mr. Hoskins' signature, not a signature place.

Q Was there any conversation concerning that the place for the signature had been cut off?

A No.

Q When the contracts left your hands, was the place for the signature cut off?

A No.

MR. NEWMAN: No further questions.

MR. CONCAGH: No further questions.

(Witness excused.)

THE COURT: Are you resting?

MR. CONCAGH: I have, yes.

THE COURT: Mr. Newman?

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MR. NEWMAN: Yes, sir.

THE COURT: At this time I am going to excuse the members of the jury for lunch. I caution you that although you have heard all the testimony, you have not yet heard the closing arguments of the attorneys and you have not yet heard my instructions as to the law.

Both of those will be before you this afternoon. Until you have heard them, I again urge you, keep an open mind. Don't reach any conclusion about the case until you have heard it all.

You may now withdraw. Please reassemble in the jury room at 2 o'clock.

(Jury left the courtroom.)

THE COURT: How long will you want for your summation, Mr. Concagh?

MR. CONCAGH: 10, 15 minutes at most.

THE COURT: 15 minutes, all right.

MR. NEWMAN: Half an hour, your Honor.

THE COURT: All right.

MR. NEWMAN: May I inquire if the defendant will proceed first?

THE COURT: Yes, it will proceed first. I will have a brief conference with you concerning the charge. I want to tell you both, don't start telling the jury what the

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law is. Give them your version of what you think the facts are and I will tell them what the law is.

I would like to have it done as expeditiously and intelligently as possible. Would you please return here at a quarter to two and I will confer with you with respect to the contents of the charge.

(Luncheon recess.)

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AFTERNOON SESSION

(In open court - without the presence of the jury.)

THE COURT: May we go forward with Music Research against Vanguard?

At this time, gentlemen, I will make some preliminary rulings with respect to the charge and advise you as to how in general I propose to instruct this jury.

I will first reiterate the obligation they have to be fair and impartial in reaching a verdict.

I will review the allocation of functions between the Court and the jury and inform them that they are sole judges of the fact and of credibility. They have to treat the case as one between persons of equal standing.

The corporation is entitled to no greater or less consideration.

I will impress upon them my neutrality in the matter; that I have no opinion; that any discussion of damages shall not be considered to indicate that the plaintiffs should recover any damages or in what amount.

I will explain the burden of proof. The preponderance of credible evidence.

Define direct and circumstantial evidence. I will explain to them how they evaluate credibility using their

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common sense.

They may considere interest as a possible motive and merely because someone has an interest need not be a reason to disbelieve his testimony.

I will charge and set forth the fraud claim following New York Pattern Jury Instruction Section 3.20.

I will state the five elements of Vanguard's requests under Section 3.20 of the New York Pattern Jury Instructions.

I will define representation to exclude mere silence unaccompanied by some act or conduct which deceived the plaintiff

MR. NEWMAN: May we have an exception to that, your Honor?

THE COURT: Yes, certainly.

I will then -- I am continuing through the bulk of number 3.20 in substance.

I have also adapted the Vanguard requests as to the fact that Music Research, they should consider whether it should have known prior to the agreement when it incurred damages.

I will explain agency of a corporation and also with respect to the activities of Mr. Gart, I will explain to them what apparent authority is.

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I will then take up the statute of limitations and what is the date of filing of this lawsuit? I have it inside, but it would be helpful if you would tell me now.

MR. DAVIDSON: The date, your Honor, was --

THE COURT: I have January 26, 1973.

MR. DAVIDSON: It was January, 1973. I have January 30th date of service. The filing must have been just prior to it.

THE COURT: The date of filing is what I count, January 26th. Do you agree with that?

MR. CONCAGH: Yes, I concede that's correct.

MR. DAVIDSON: Yes, sir, January 26th.

THE COURT: I will define reasonable diligence in the terms of reasonalbe proof demand.

I will charge damages in terms of indemnity for the actual pecuniary loss sustained.

I will instruct concerning mitigation of damages and then I will tell them that they have to be unanimous. They are supposed to deliberate and if they have any questions or anything additional they need, they may send out a note.

mR. POWELL: Your Honor, we would like also --

THE COURT: Before I hear you, may I also state that you have an exception as to any of your written requests

to charge filed herein which are not given in words or substance. Your record is protected. You filed plaintiffs' requests on August 25, 1975 and I have defendants' requests on August 29th.

To the extent I did not so charge as to any of these actually or in substance, you now have an exception and you needn't say anything more to protect your rights as to those.

I will take further exceptions after the charge.

MR. POWELL: We would like to get a charge on exemplary damagers as well under duPont-Gallagher vs. International Magnatape. I have a Xerox of the case and also on attorneys fees under Fugazy Travel Service vs. Ernst & Ernst.

THE COURT: I don't know what factualy basis there is in this case to talk about exemplary damagers. What did they do to bring out punitive or exemplary damages?

MR. POWELL: Simply if the jury believes first of all that there was a fraud and they also believe that the fraud involved moral culpability or reckless or wilful invasion of personal rights or that they violated some duty springing from a relation of trust or confidence, any one of those --

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THE COURT: I told you before, I find no relation to trust or confidence. I really couldn't say that there was anything so gross or reckless or so extremely wilful here as to facilitate finding that the public interest requires punitive damages.

If their claim is believed, it is a tremendous amount of actual damages. If the jury finds for you, the amount involved is quite substantial and I am not inclined to put before them the question of punitive or exemplary damages. I don't think there is anything in plaintiff's proof that requires it.

Also, I am going to ask them for a general verdict since I have denied the equity claims earlier. I now make an express finding and I think I made it earlier before, plaintiff has an adequate remedy in law for money damages. For the damage done to his property.

MR. POWELL: Would you consider an instruction on legal fees?

THE COURT: I decline to instruct them with respect to legal fees as an item of damage.

All right.

Do you have anything, Mr. Concagh?

MR. CONCAGH: No, your Honor.

THE COURT: I will take a very brief recess and

then we will bring out the jury and have your summations.

(Recess.)

(In open court - jury present.)

THE COURT: Good afternoon, members of the jury.

MR. Concagh, you may make an argument in summation in behalf of Vanguard.

MR. CONCAGH: Thank you, your Honor.

Your Honor, ladies and gentlemen, my adversaries, Mr. Court Reporter:

I made an opening remark before you a few days ago on this case, ladies and gentlemen, and I asked you to use your common sense and listen to the testimony from the witness stand.

I tell you the same thing now while you're about to be asked to go out and deliberate on this case.

I told you you would hear a tale and I don't think I have disappointed you.

We had Mr. Thomas Hoskins take the witness stand and say that he saw an agreement. The agreement is before you, it is in evidence, and that agreement represented his agreement with Mr. Solomon regarding the recording of Mississippi John Hurt's music, but that there was a change; that Herb Gart in Mr. Hoskins' presence, had taken a pencil to that agreement and crossed out the words "a minimum of two"

and put in "two and only two."

Herb Gart said he didn't.

Who is Herb Gart? Is he an employee of Vanguard? Herb Gart is an individual who was asked by Tom Hoskins to go out and contact a record company and make an arrangement for Mississippi John Hurt's music.

Tom Hoskins and Herb Gart had discussions and they had an idea as to what they wanted.

Within that idea there was no limitation to Herb Gart of two and only two and as far as Herb Gart is concerned, it may have been mentioned, but he told Tom Hoskins, "We can't get a deal with Mercury" and their attorney wrote a letter, Mr. Powell, and said in the letter, again which is in evidence, "My client isn't inflexible on the two-album deal."

So why does Mr. Hoskins come to court and say "two and only two"? Because it is is only straw. He is grabbing for straws.

When did this happen? 1965. The contract was signed by Mr. Gart, by the artist, Mississippi John Hurt, there is no question about the authenticity of this document. There is no question. In fact, it was Tom Hoskins' testimony that told us, he went to the recording studio of Vanguard's on 23rd Street and attended a six-hour recording session of

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Mississippi John Hurt's music.

He tells us he never knew about a signed contract. He tells us he spent day after day with Mississippi John Hurt. Yet when his own agent, Mr. Gart, tried to get him to sign this agreement, he wasn't to be found. He was off on a trip.

He participates in the recording session. He never asked Mr. Solomon for the contract because he knew it was signed and he knew it was in the possession of Mr. Solomon.

Do you think Mr. Gart knew that Vanguard Records would record an artist without its standard form agreement was being signed? It was signed by the artist and it was signed by Mr. Gart.

Was it changed, as Mr. Hoskins would have us believe, by Herb Gart? Did Herb Gart physically put in that agreement, "Two and only two"?

According to Herb Gart, Hoskins is lying. Do they belong to Vanguard? Is Hoskins related to Vanguard? Is Herb Gart related to Vanguard?

Tom Hoskins and Herb Gart approached Vanguard. The same way Tom Hoskins and Herb Gart approached Mercury and then, after the first meeting, Mr. Hoskins said to Mr. Solomon "You will be speaking with Herb Gart. I am turning the negotiations over to him."

Now, if that is not clear, then nothing in this world is clear as far as I'm concerned because that is as clear as it can be and that is Tom Hoskins who I am quoting.

"The negotiations are turned over to Herb Gart, you will be dealing with him."

Is Mr. Solomon expected to know who Gustav and know who Alfonse is when they decide in 1973 when they decide they want to sue somebody? Should he know when the artist is delivered to him, when the man who purports to represent the artist comes to him and says, "Deal with Herb Gart."

A tale? You bet it is.

1965. They are in court in 1975. Hoskins knew nothing about this agreement.

Gart did; he signed it. Mississippi John Hurt knew about it; he signed it. Mr. Solomon knew about it; he signed it. The only one -- no, two, in this case, who didn't know about that agreement being signed by all the principals, by the artist and the recording company, is Mr. Hoskins who had no idea it was signed. Kept calling up Mr. Solomon's office, kept asking Mr. Solomon, let his artist record at a six-hour recording session waiting for a contract to be signed and after telling Mr. Solomon, you're going to deal with Herb Gart on this.

What could be clearer? The only other person

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that didn't know about agreement perhaps was Mr. Rosenthal. Where does he fit in? Where does his testimony fit into the case?

He and Mr. Hoskins get together for a lawsuit. They get together and they are here for a lawsuit and that is it. They come into court and they bring witnesses before you telling you that these twenty-five hours of tape, five hours of which at least are dialogue, are worth $250,000. That is their figure. Tell me if I'm wrong. Yet in 1971 before this lawsuit and before they were worth $250,000, Mr. Rosenthal gives Mr. Hoskins $700 on an advance for this priceless inventory, five hours of which is dialogue.

Have we heard it? Do you think if something was worth $250,000 you would have somebody appraise it? If you had a diamond that was worth 5,000; $1,000, wouldn't you take it to an appraiser and say, "Look at it, spend some time with it." What do they do? They bring in a gentleman from Washington, D.C. who in 1970 was an assistant in a record shop. Now he has his own shop and he says he knows the business. He knows the business and he can come and tell us that they are worth $250,000.

If these tapes were worth anything, doesn't it surprise you, doesn't it offend you, that they haven't had an expert, somebody who is qualififed in the music industry, to

listen to these tapes, to sit down to take the time. They took our time and to take the time and trouble to listen to this twenty-five hours worth of tapes and come into court and go to the witness stand and say, "I have listened to twenty five hours and I can say that they are worth thus and so."

The reason it wasn't done is it is impossible. Nothing could be clearer.

Are you going to believe Hoskins had told Gart to write it in and I saw him write it in and Gart comes to court and says, "That is the agreement I signed, that is the agreement I modified." There is no two and only two in that agreement and nobody ever told him to do that.

It is a fabrication. He is grabbing at straws, that is why we are here.

They tell us that these tapes have been made worthless and then Mr. Hoskins takes the witness stand under oath and says he acquired some tape from a fellow named Kaiendahl this summer and that he is intending to put out another record album. If that doesn't offend you, they are working on a new record.

What is Rosenthal, his partner, say, when he takes the witness stand and swears under oath. "I didn't know that." We are back again, Gustave and Alfonse.

Is that what we are to spar with? Is that what

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Vanguard is being asked to spar with? Do we have anything on the record about what these tapes are worth?

What did they do? They waited. That's all they did. That's the only consistent thing they have done in this case. They waited until 1973 and brought a lawsuit in this court.

Assume Hoskins didn't know. Herb Gart knew about the agreement. He signed it. Do you believe Gart or do you believe Hoskins? Could you believe anything Hoskins said? Was Gart mixed up? Perhaps he was. I still don't believe Hoskins.

If they were to come to court and take the time they have taken, wouldn't you think they would have somebody listen to those tapes or are they going to ask us as a jury to fence with a ghost, the way they have asked Vanguard Records to fence with a ghost.

What does Vanguard Records have to say? Was it two or was it four? There is a document in evidence made eight years before this litigation, eight years before anybody had any idea that this litigation was going to be brought and made by Mr. Maynard Solomon of Vanguard Records right after Herb Gart, Tom Hoskins and Maynard Solomon negotiated the agreement and he made in the course of his business what's been referred to in this case as a deal memo, a memo

reflecting what the parties agreed to in 1965.

I respectfully suggest you review that deal memo. It is in evidence. Review that. It is old, but it is not stale and it reflects what the agreement was.

Does Hoskins come to court with notes? Doe he come to court with anything? He comes to court with a couple of confused witnesses.

Does it offend you? Sure, Rosenthal is a party, he has heard all the tapes. They are worth a fortune or they would have been, but he is going to put a new record out.

Did Herb Gart work for Vanguard Records? Did Herb Gart have anything to do with Vanguard Records? There has been no bit of testimony because it is not a fact. It never was true and nobody suggests that. Who did he belong to? Who did he work for? Who was he trying to negotiate and arrange the deal for? Mississippi John Hurt, Tom Hoskins and himself. He approached Vanguard with Hoskins and he was turned over to Vanguard.

Is Vanguard supposed to keep itself on shells that are moving about before it when it's got an agent who has been told by the principal, Mr. Hoskins, you will deal with Herb Gart.

Is Herb Gart lying when he says he saw -- is Tom Hoskins lying when he says he saw Herb Gart physically

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change that document under oath. I respectfully suggest you try finding that from the document. I have.

What does it come to? Why are we here? What does it boil down to?

It boils down to an incredible afterthought. A 1973 afterthought and they are going to bring Vanguard Records into court and they are going to sue Vanguard Records and Vanguard Records is asked to defend itself against a bunch of ghosts. It's got to choose the right shell. Do you believe it? Does it offend you?

Who testified on behalf of the plaintiff, now Music Research? Mr. Rosenthal, the man who knows these tapes are worth the vast amounts he tells us yet paid $700 advance in 1971.

Again it is in evidence. Please look at it. I respectfully ask you to. Cake and eat it. Shell tricks. Am I making them up?

Then Tom Hoskins comes to court again under oath and he tells us that he had an artist recording at a session at Vanguard and Herb Gart never told him about the agreement. He asked Mississippi John Hurt and he didn't tell him about the agreement. He asked Maynard Solomon and he didn't tell him about the agreement. Nobody told Tom Hoskins about this agreement.

Assuming in your wildest imagination that he is telling the truth about that point, it is his own fault. If his artist, if Herb Gart and nobody else in the world told him about that agreement because he is the one that told Herb Gart to go out and arrange something for him and for his artist. It is his own fault if Herb Gart didn't tell him and I don't believe for the moment that Herb Gart didn't tell Tom Hoskins at the recording session or at least many, many times before that.

MR. NEWMAN: Your Honor, I object.

MR. CONCAGH: That he signed the agreement.

MR. NEWMAN: I heard three times Mr. Concagh's personal views.

THE COURT: Yes, an attorney cannot give his personal views about whether he thinks his client is right or wrong or truthful or untruthful. I will sustain the objection. No personal views.

MR. CONCAGH: What do we have? What are we asked to come to court and resist? A tale.

As I said when I opened to you, if I came to your home and I told you such a tale and I sat in your living room and I told you this tale, would you believe it? Would you believe such a story? You're here, as you have heard, for your common sense. I respectfully ask you, you return to the

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jury room after Mr. Newman's summation and apply your common sense.

I told you it would be a tale and I didn't disappoint you. I thank you all very much for indulging me and listening to me. Thank you.

THE COURT: Who is going to sum up for the plaintiff?

MR. NEWMAN: I will, your Honor.

THE COURT: All right, Mr. Newman, you may make a closing argument for the plaintiff.

MR. NEWMAN: Ladies and gentlemen, Mr. Concagh, Judge Brieant:

I will have to be a little bit longer than Mr. Concagh because I represent the plaintiffs and it is our burden to persuade you of our case. Unlike Mr. Concagh, I want to talk primarily about documents, evidence that appeared before you and testimony.

You have heard the story very recently and the tale, which is a poignant tale, about Tom Hoskins discovered John Hurt very near the end of his life and gave him an opportunity to play once more before the public and to record records.

You have heard how much Tom Hoskins got out of it. Practically nothing.

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I think that having heard Tom Hoskins' testimony and seen him on the witness stand, you know that he is not a sophisticated man and in 1965, 1963 I think we can infer that he was probably even less sophisticated.

Mr. Solomon, on the other hand, you have also heard on the witness stand. I suggest to you that there is a vivid contrast between Mr. Solomon and his sophistication and Mr. Hoskins.

Mr. Hoskins testified that he was told by Mr. Solomon attended by him, Mr. Gart and by John Hurt in November of 1965 or that there was a conversation at that time at which two and only two records would be put out. It made no sense whatsoever for Mr. Hoskins to permit a contract which allowed Mr. Solomon to take up all of what is admittedly the very, very limited repetoire of Mississippi John Hurt.

Mr. Hoskins had gotten nothing in the way of money out of his relationship with John Hurt. He obviously was a music lover and got a great deal of satisfaction from the discovery and the participation with John Hurt, but up until this time he had been waiting, hoping that he would be able to make some money out of this.

As I say, it makes no sense whatsoever for any more than two records designed to give public exposure to be put out.

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There then was a meeting at the recording session at which Mr. Hoskins met Mr. Solomon. He inquired about the contract. The contract Mr. Solomon said was never there. It wasn't done. It wasn't prepared and somehow or other put him off.

Again in April there was a meeting in Mr. Solomon's office, apparently as a chance encounter. Mr. Hoskins again asked about the contract and again was put off and again in July of 1966 again he was put off.

But in truth and in fact on November 30, 1965, there had been a contract signed by Mr. Gart, Mr. Hurt and Mr. Solomon.

After July of 1966 either in August or September, as stipulated, the first record came out. In September of 1967 the second record came out.

There then, as you know, was a long hiatus until 1971, March of 1971. During this period of time it seems clear that Mr. Hoskins justified the impression that what he wanted from Mississippi John Hurt was happening; that is, that two and only two records had been produced because four years had gone by and only two records had been produced.

In addition, John Hurt had died and there wasn't much more Mr. Hoskins or anybody else could do for

John Hurt. They could do something for his widow and grandchildren, but nothing more for him.

We talked about credibility in this case and I think we should talk primarily about Mr. Maynard Solomon. You heard yourself from the witness stand before you what I can only describe as lies or untruths from Mr. Solomon and on the matters that were completely germane to this case.

That is, his knowledge of the contract between Music Research and John Hurt.

Was he aware of the management agreement between John Hurt and Music Research in 1963? He told us from the witness stand, that he didn't know anything about it. Yet, as you know, Exhibits 6A and 6B, the Newport Folk Festival records, show clearly that credit was given to Piedmont Records and other exhibits which you have seen show was a part of Music Research.

Mr. Solomon also has testified that he regarded Mr. Hoskins as the personal manager of John Hurt. And he admits in his tesitmony here that a personal manager, among other things, is a person who is in charge of recording contracts.

The notes made by Mr. Solomon while he was going to prepare the contract provided on two pages, two contracts to be signed also by Tom Hoskins, personal manager,

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on the first page. Should be signed by Tom Hoskins as well.

If it were not necessary for Tom Hoskins to sign it, why did Maynard Solomon tell himself he should sign it?

You have also heard that in 1964 there was a letter from Mr. Powell which was received by Vanguard Records stating that Music Research has the rights to the music of John Hurt.

You heard from Mr. Solomon on the stand that he didn't know about that either even though in his file in his own handwriting on it. I ask you to look at these and the other exhibits and decide for yourself whether to believe Mr. Solomon on the stand or believe the exhibits and the documents that were written at the time they occurred, the events occurred.

Then again in 1966 you heard this morning Mr. Solomon apparently received a letter from Mr. Goldstein asking did he know anything about the existence of an agreement between John Hurt and Music Research. Mr. Solomon said he didn't know anything about it. He testified to that today and he wrote a letter back to Mr. Goldstein saying, "I'm sorry, I don't know anything about all this."

Whereas in fact, as has been officially admitted in this case, perhaps unbeknownst to Mr. Solomon because he gets so tangled up, it has been admitted that he received a

copy of the contract in May of the same year. Yet in August of the same year, 1966, he is writing to Mr. Goldstein saying he never heard of it.

There is no question which to believe there, Mr. Solomon on the stand or his own official position taken in this case.

Now, what really happened here? I submit to you that you can reasonably infer from the evidence you have heard that Mr. Solomon was well aware back in 1963 that Mississippi John Hurt was under an exclusive recording contract with Music Research. Otherwise, why did he go to the trouble of exchanging numerous letters with the Spottswoods of Music Research, all on the subject of obtaining permission of getting a few songs of John Hurt released on those two Folk Festival albums.

At the same time he got a notice from Mr. Powell stating the legal position of Music Research with respect to the music of John Hurt.

With this as background in 1965 evidentally the opportunity to record John Hurt came up through Mr. Gart. There was a meeting. Mr. Hoskins was there. It seems clear that Mr. Solomon knew from the notes who Mr. Hoskins was, the personal representative, the personal manager of Mississippi John Hurt.

I think that we submit to you and everyone seems to be referring here to Mr. Gart as a more sophisticated person than Mr. Hoskins. Mr. Hoskins needed some help and it seems clear that Mr. Gart was there to give him some help on negotiating the contract.

Now, at this time Hoskins, as Hoskins has testified, there was discussion or a demand made for only two records. Mr. Solomon didn't like that. In his own notes I submit to you he is putting down what he wants, what he hopes to get, not necessarily what is agreed to because there is no agreement yet. Mr. Solomon wants more than two records.

How is he going to get more records? How is he going to get more out of this? Well, he knows that Mr. Hoskins is not sophisticated so he decides to work through Gart, but Gart is intelligent enough not to get on the hook himself. Even though he may think the contract is okay and send it back to Mr. Solomon, he doesn't sign for Hoskins.

Instead, he sends it back to Solomon so that he can get Hoskins' signature. So the contract is still awaiting Hoskins' signature.

February comes along. They have set a recording date. Solomon must be getting a little bit nervous about Hoskins not having signed, not knowing whether Hoskins will sign because he knows Hoskins wants only two records

because otherwise what is Hoskins going to get out of this?

So when the recording session comes up he muddles through relying on Hoskins' lack of sophistication. Hoskins obviously is much more interested in the quality of Mr. Hurt's performance, the songs he will sing, the musical aspects of this, but he does ask, "Where is the agreement? When can I see it so I can sign it?"

Solomon puts him off and says something to the effect that it isn't ready yet, we will get to it. Again, as I said, in April and July the same question is asked, put off again and again.

Phone calls are made to the office, Solomon doesn't even answer.

Finally, as you have heard, while all this is going on, Mr. Solomon gets a little worried. He has some correspondence with the other booking agent, Dick Waterman, and apparently other people are getting to know about this agreement, so he decides he has to do something about it.

So he gets Mississippi John Hurt in and with his own typewriter, the same one that he used to type up his notes, he types up a nice literate letter for John Hurt to sign. Not very well typed, but certainly well expressed.

Directing John Hurt to Mr. Solomon's life-long attorney so he can be put in the capable hands of Mr.

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Solomon's own attorney. What for? To get out of the contract, the contract he didn't know anything about. Even if he did know anything about it, it wasn't valid. Nevertheless, he turns over Mr. Hurt to his own lawyer to get out of the contract.

Then Mr. Goldstein writes him, do you know anything about this? He writes back and says he has no information.

It seems fairly clear that Mr. Solomon was quite anxious about this contract, the Music Research contract. Why was he anxious about it? Because he didn't have Hoskins' signature giving him permission to record John Hurt. He didn't have the rights he should have had to John Hurt. The rights he wanted to get.

As late as 1971 when trouble started to brew, we see him again writing a letter, April 27, 1971, "Let's take steps to break the contract with Music Research."

He has a contract that is good. What is he so worried about the contract? Why is he so concerned? Why does he continue from the spring of 1965 to be so concerned about the Music Research contract?

Now, of course, we find that somebody did a very unintelligent thing here. They physically altered a document in a very significant place. They cut off, somebody cut off at some time the place for Mr. Hoskins' signature. In the

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light of what has happened it doesn't seem very intelligent.

Nevertheless, it was done and it seems quite clear it wasn't done with any benign intent.

When was it done, and by whom was it done? That of course is for you to decide. We can only take the facts as they have been presented here and piece them together. Using common sense, looking at motives and determine who did this and why did this person do it.

I submit to you that it was done by Mr. Solomon and I don't necessarily suggest that it was in 1965 or 1966. I suggest to you that you can infer from the facts that it might have occurred later when trouble started to occur, when Mr. Solomon got letters from Mr. Powell saying "What are you doing releasing a third record? Don't you know we have an agreement with Mississippi John Hurt?"

Then, what did Mr. Solomon do? He panicked and he said "I have got the only two contracts around." Hoskins seems like a disorganized, naive fellow. I don't think Gart's got any contract. I will just snip this out and if anybody asks fo a copy of the contract, I will give him a Xerox and it won't even show, maybe it won't even show.

Anyway, that wasn't very smart. But I submit to you it was a cover up to cover up what he was doing.

Now, you heard Mr. Solomon testify under oath that

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somehow or other when these two contracts came to him without the cut-outs, when they came to him they had the signature already cut out. Who did they come from? Mr. Gart. What did Mr. Solomon do? Mr. Solomon who was so concerned that he wrote memoranda to himself, what did he do about the fact that the contract was mutilated, funny looking, a big corner taken out of it? He put it in his files. Why not? Nothing unusual about that. No conversation with Gart about it.

You heard that under oath from Mr. Solomon. You heard a lot of things under oath from Mr. Solomon. All of the other things, when he is confronted with a document, it turns out that he was wrong, although he doesn't admit he is wrong, not even from the official taken by his counsel or accepted by his counsel.

Mr. Gart is called to the stand. Mr. Gart, no interest in this lawsuit at that point, he doesn't care who wins or loses. No motive to say anything. He testifies under oath that he sent those contracts to Mr. Solomon intact with nothing cut out. What motive did Mr. Gart have for cutting out Mr. Hoskins' signature? The only person with a motive was Mr. Solomon.

I submit to you it didn't necessarily have to happen then. I submit to you that it probably happened when

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the heat got turned on and people started to investigate what had gone on.

Mr. Hoskins, Mr. Rosenthal and Mr. Powell find out when the third record came out in March of 1971, a little less than two years before this lawsuit was started, that there was a contract or supposedly some kind of rights that Solomon claimed to be able to put out more Mississippi John Hurt music. Inferior music at that as you have heard from the experts.

Now, there has been a lot of talk or a little bit of talk by Vanguard's counsel about no experts having listened to the tapes. Did you hear from any experts representing the defendant on these tapes? Did you hear a word of testimony as to the quality of these tapes from the other side? All you have before you is testimony to the effect that the tapes are of fine quality, equal to the Vanguard Records,

You have also heard there were 35,000 copies of an album of five albums that could have been released. You heard that not only from Mr. Rosenthal, but from Mr. Micklin, one of the experts, the man who has the retail store in Washington.

I think the point is as far as the damages are concerned, the evidence is undisputed. There is no evidence on the other side and I think you have heard from experts

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who have heard the tapes, who know the value of the tapes and they have told you. The value of the tapes before and the value of the tapes after.

I suggest to you this is an attempt by an experienced and wiley records executive to take advantage of a relatively unsophisticated man who at thattime was youthful in the ways of business.

I ask you not to let him get away with it.

Thank you.

THE COURT: Members of the jury, you haven't heard me yet and I think the instructions that I am going to give you very shortly will be of some assistance to you in going about your function in this case, which is deciding the issue of fact and before I do give my instructions, we are going to have a brief recess and during that recess, because you haven't yet heard the Court's instructions, I ask you still, keep an open mind, don't discuss the case.

We will resume in about five or ten minutes with the Court's instructions and following that you will commence your deliberations.

Please withdraw to the jury room.

(Jury left the courtroom.)

THE COURT: We will be in recess, gentlemen, for about five minutes.

(Recess.)

EOP

MUSIC RESEARCH, INC.

vs

VANGUARD RECORDING SOCIETY, INC., 73 Civil 394

vs

HERB GART etc.

New York, N. Y.

October 24, 1975

CHARGE OF THE COURT

THE COURT: (Brieant, D. J.) I am now about to charge the jury. Any persons who are spectators who wish to leave during the charge must leave now, because the door will be locked during the period of time that the jury is being instructed.

THE CLERK: Mr. Marshal, lock the door.

THE COURT: Miss McWade and members of the jury:

You have now reached that point in this trial when you are about to enter into your final function as jurors, which, as you all appreciate, is one of the important duties of citizenship in this country.

I know you have all given very careful attention to the evidence in this case during the period we have been together, and I am sure each of you will approach your final

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duties and commence your deliberations and conduct them in that same fine spirit which you have so far displayed. I am sure that you will show impartiality and fairness and reach a just verdict in this case.

As I mentioned to you at the beginning of the trial, when you were selected, in our court system the function of the Judge in the case and the function of the jury are separate. You are not lawyers. It is my duty to instruct you as to what the law is. It is your duty to accept the law as I state it to you and then to determine the facts from the evidence, to decide whether the plaintiff has sustained its burden of proof as to the claim made here.

Now, just as I am the exclusive judge of the law, you, the members of the jury, are the exclusive judges of the facts. You and you alone determine the weight, the effect and the value of the evidence, and you decide the credibility or the truthfulness of the witnesses, and on that basis you will resolve the issues in this case.

I will now explain to you what the issues are and what factors or elements you are to consider in resolving them.

This case should be considered and decided by you as a dispute or an action between persons of equal standing in the community, of equal worth and holding the same or

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similar stations in life. A corporation is entitled to the same fair trial at your hands as a private individual would be entitled to, and you will treat these two corporations just the same asif they were persons. All persons, including corporations, are equal before the law, and they are to be dealt with equally in a court of justice.

Now, if in the course of my instructions I make any reference to any evidence which does not agree with your recollection, you are to disregard it, because it is your recollection of the evidence that governs and not anything said by me or anything said by the attorneys in their opening statements or in their summations or during the trial.

The attorneys in this case have the right and the duty to press the legal theories they hold. They are simply performing their duty.

Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken out by the Court must be disregarded in its entirety. Put it out of your minds. Also put out of your minds any exchanges which may have occurred during the trial between the attorneys or between any attorney and the Court, because I do not favor one side or the other or intend to criticize anybody.

I do not wish to indicate to you that I have any opinion as to the credibility of any witness or as to the

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merits of the case. That is your function. That is what you are here for to decide. It is yours alone, and I leave it entirely with you. So please do not assume from anything I may say or anything I might have said that I hold any opinion as to any matters concerning the issues in this case. Please do not reach any opinion that I may have any attitude or that I may tend to favor any particular result or outcome for this case, because I do not.

It is important to me to keep the trial of this case moving forward. You are here as jurors. You are sacrificing your time from your other pursuits to discharge a very important duty, and there are many cases in the court house; so if I may have seemed in any sense anxious to conclude the trial or impatient with any delay, I trust you do not consider me so, but if you do, put that out of your minds.

This is not a contest between the lawyers. It is a case between the parties. It is to be decided by you according to the merits and according to where the truth and justice lie. I ask you to concentrate on the merits and put all other things aside.

Now, in talking with you I will refer to the issue of damages. You are not to consider any instructions I may give you with respect to damages as indicating that the

plaintiff should recover damages or indicating in what amount he should recover damages. When I say "he", I mean Music Research, Inc. That is a matter for your decision and yours alone. Simply because I mention it, it doesn't have any significance. It does not bear on the question.

This is a civil case, and in a civil case the plaintiff has the burden of proof to establish all of the elements of its case to your satisfaction by a preponderance of the credible evidence.

A fact is proved by the preponderance of the evidence when all the evidence you believe tends to persuade you of what the witness or witnesses have said or what the documents show when weighed against any other, contrary testimony or evidence that has come into the case or any lack of evidence.

A preponderance of the evidence in the case means such evidence as, when considered and compared to what is opposed to it, has more convincing force and produces in your mind the belief that what is sought to be proved is more likely than not true.

It is often said that the evidence is to be weighed on scales, and if you find that the evidence on any issue of fact is equally in favor of the plaintiff and the defendant, that is, if the scales are evenly balanced, then

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plaintiff would have failed in its burden of proving the case as to that item by a fair preponderance of the credible evidence. He cannot recover.

However, if the scales tilt even slightly, however slightly, that would constitute a preponderance of the credible evidence, and the plaintiff would have satisfied the legal burden of proof imposed upon it as to that particular matter in issue.

Some of you have read about or sat as jurors on criminal cases, where they say in a criminal case that something has to be proved beyond a reasonable doubt. That is the standard which society applies in a case involving crime; but in a civil case the test is proving something by the preponderance of the credible evidence and not beyond a reasonable doubt. That expression -- beyond a reasonable doubt -- belongs only in criminal courts and in criminal cases.

A preponderance of the credible evidence does not mean the greater number of witnesses or the greater length of time taken or the greater number of documents introduced by either side. It refers to the quality of the evidence as you regard it, the weight, the significance and the effect it has on your mind.

For your guidance in considering the testimony you have heard, I must tell you there are two classes of evidence

recognized in courts of justice from which a jury may properly find the truth as to the facts of the case. One is called direct evidence; the other is called circumstantial evidence.

Direct evidence tends to show the facts in issue without any need for any amplification, although, of course, there is always the question as to whether it is to be believed.

Circumstantial evidence is that type of evidence that tends to show facts from which other facts in issue may reasonably be inferred. It is evidence which tends to prove the fact in issue by proof of other facts which have a legitimate tendency to lead the jury's minds to infer that the facts sought to be established must be true.

There is a traditional example given for circumstantial evidence. Sometimes in a tall building like this, it is difficult to tell, looking out the window, whether it is raining outside or not, but if you look out the window and you see the people passing by in the streets have their umbrellas up, you will usually come to the conclusion it must be raining. You have the direct evidence, the evidence of your own eyes, your senses. They tell you the umbrellas are up. That constitutes the circumstantial evidence from which you are entitled to conclude it must be raining.

In other words, circumstantial evidence consists of

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facts proved from which the jury may infer by a process of reasoning other facts in issue.

Circumstantial evidence, if believed, is of no less value than direct evidence. You may rely on either or both in reaching your conclusions.

Now, in determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine what you believe to be the truth, and the degree of weight you choose to give to that testimony. There is no magic formula by which you can evaluate testimony. You bring to the courtroom all your experience and background of your lives. Each of you in your everyday affairs determines for yourself the reliability of statements made to you by other people. The same tests you use in your everyday dealings are the tests which you apply in your jury deliberations.

You should carefully consider all the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to show whether a witness is worthy of belief. Consider the witness' ability to observe the matters as to which he testified and whether he impresses you as having an accurate recollection of these matters.

You should consider the demeanor and manner of the

witnesses as they testified. You may also consider the interest or lack of interest of any witness in the outcome of the case. A witness who is interested in the outcome of a case is not necessarily unworthy of belief, but the interest of a witness is a factor or possible motive which you may consider in determining the weight and credibility to be given to his testimony.

In doing this, you may also consider whether the testimony of a witness is corroborated by the testimony of others or by documents or by exhibits. You may examine whether the testimony of a witness is consistent or inconsistent with prior actions as shown by exhibits or with prior testimony taken before the trial and read to him on the occasion of this trial.

Now, a witness may be interested in the outc ome of this case by reason of his ownership interest in a corporation which is a party to this suit. In this regard, you will remember that Mr. Hoskins testified about his stock ownership interest in Music Research, Inc. And Mr. Solomon testified about his stock interest in Vanguard Recording Society, Inc.

You will also recall that Mr. Gart testified about his participation in the Gart Management Corporation. Gart Management no longer has any interest in the outcome of this litigation, and Mr. Gart is not an interested witness.

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You are entitled to consider the interest of any witness in determining what weight to give to his testimony. However, merely because a witness has an interest in the outcome of this litigation need not be reason to disbelieve his testimony unless you conclude it is untruthful. But interest may and sometimes does create a motive to lie.

If any witness is shown knowingly to have testified falsely concerning any material matter in this case, you have a right to distrust such witness' testimony in other particulars, on the principle that a person who lies about one thing may lie about other material things.

You may reject all the testimony of such a witness, or you may give his testimony such significance or weight as you may think it is deserving of.

An act or omission is knowingly done if it is done voluntarily and intentionally and not because of a mistake or an accident or some other innocent reason.

Now I will instruct you concerning the plaintiff's claim for fraud in this case.

The plaintiff has sued to recover its actual damages on account of certain representations said to have been made to the plaintiff by the defendant, Vanguard, which the plaintiff claims were false and fraudulent.

One who represents as true that which is false, with

intent to deceive the person to whom the representation is made is liable to that person if he, believing a representation to be true, acts in justifiable reliance upon it and suffers damages as a result.

Now, members of the jury, fraud is never to be presumed. It must always be proved to a preponderance of the credible evidence. You should assume that men are fair and honest in their dealings with each other until you are satisfied that the contrary appears from the evidence.

If any transaction or circumstance is equally capable of two interpretations, one honest and one fraudulent, it should be found to be honest.

The burden of proof is on the plaintiff to establish the following essential elements. I am about to state the elements of a cause of action for fraud, so please give very careful attention to these elements.

First, that the defendant, Vanguard, made a representation of fact to the plaintiff through Mr. Hoskins.

Second, that such representation was untrue.

Third, that the defendant intended to deceive the plaintiff or Mr. Hoskins.

Fourth, that the plaintiff, through Mr. Hoskins, believed andjustifiably relied upon the statement.

Fifth, that as a result of reliance upon the state-

ment the plaintiff corporation, Music Research, Inc., sustained a monetary loss.

The first question for your consideration is: did the defendant, Vanguard, make a representation to the plaintiff? A representation of factis made by words or acts when an impression is communicated to the mind of another person. Language used or the act done is to be interpreted by you according to the effect it would produce upon the ordinary mind.

The mere silence of a defendant or an officer or director of the defendant unaccompanied by some act or conduct which deceived the plaintiff would not be a representation that would satisfy this element of the fraud claim.

In this case, as I read to you at the beginning of the trial from the pre-trial order, the parties agree that Music Research and Mississippi John Hurt entered into a management contract on or about March 15, 1963. This contract is in evidence. You can read it in the jury room. By its terms it purports to have given Music Research the exclusive right to record or contract with others to record the music and performances of John Hurt.

The parties also agree that on or about November 30, 1965, another document, which is also in evidence and which you may look at, was signed by John Hurt, by Maynard

Solomon on behalf of Vanguard Recording Society, Inc. and Herb Gart.

Now, the plaintiff claims here that Vanguard, through its officer Mr. Solomon, knew about Music Research's rights with respect to Hurt and did make certain representations to Mr. Hoskins. Those representations, it is claimed, were that Vanguard would record and publish two and only two long playing albums of Mississippi John Hurt's music, that Music Research would retain all its existing rights other than for the publication of these two albums with respect to the performances of John Hurt and that the value of Music Research's rights would be enhanced by the Vanguard recordings and that Music Research, through Mr. Hoskins, would be a signing party by the signature of Mr. Hoskins to this agreement of November 30, 1965.

If you find that these representations were made by words or action, then you must consider whether such representations as were made were true or false. If you find falsity, the third element of the fraud claim which you must then consider is whether in making these false representations, the defendant, Vanguard, intended to deceive the plaintiff.

A false statement is made with intent to deceive if it is made with knowledge that it is false and with the

intention that the person to whom it is made may reasonably rely on it.

The plaintiff contends that Vanguard knowingly made these false representations, and they contend that Vanguard knew that Hurt had entered into this agreement with Music Research, Inc.

The defendant denies that it knew of the 1963 agreement between Hurt and Music Research, Inc. in November or December 1965.

For you to find that the false representations were knowingly made, you must find that Vanguard knew of the relationship between Hurt and Music Research and made the representations by word or act intending to deprive Music Research, Inc. of some of its rights under this agreement and intending that Mr. Hoskins would rely, or conduct himself in a fashion which would produce that result.

If you find that the false representations were made with intent to deceive, then you must determine whether the plaintiff's agent, Hoskins, or President Hoskins, believed the representations and whether he acted in justifiable reliance on them.

Whether the person to whom a representation is made is justified in relying on it generally depends on whether the fact represented is one that a reasonable man

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would consider important in reaching a decision to act or to refrain from acting in the transaction in question.

Obviously, if you don't believe what they tell you, you cannot be said to rely reasonably on it.

Now, even if the representation is not such a fact, reliance may also be justified if the person making the representation knows that the person to whom it is made considers it important and will rely upon it.

It is contended here, at least with respect to whether or not Hoskins would be required to sign this contract in behalf of Music Research, Inc. that he considered it important and that that fact had been made known to Mr. Solomon at the time.

If you find reliance, you must consider whether it was justifiable and whether Hoskins, acting for Music Research, was justified in believing the representations made and in acting upon them.

With regard to this the defendant contends here in this trial that Music Research knew of or, in the exercise of reasonable care, should have known of the terms of the November 30, 1965 agreement between John Hurt and Vanguard prior to the time at which the damages were incurred.

Under the particular circumstances of this case, you may find that damages were incurred when a recording session

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said to have taken place in a hotel in New York in February of 1966 or later occurred at which Vanguard came into possession of substantial tapes made by Hurt in the presence of Mr. Hoskins.

In considering whether Music Research believed and relied upon the representations alleged to have been made, you should consider whether Music Research, through its officers, knew the underlying facts and whether, armed with this knowledge, it was reasonable for them to believe and rely upon the representations which were made.

The parties to this case, as I mentioned to you earlier, are both corporations. A corporation is to be treated by you as a single person. It is an artificial person, which does business and acts only through its agents, officers, directors and employees. The act of an agent, officer or director or employee will be considered by the jury as an act of the corporation if the act was done in the course of his employment and within the scope of his duties.

Accordingly, it is fair to say in this case that Mr. Hoskins is an agent of Music Research, Inc. and that Mr. Solomon is an agent of Vanguard Recording Society, Inc.

IN addition, you may also find that Mr. Gart was the agent of Music Research, Inc. There has been testimony that

he held himself out to be the agent of Music Research, Inc. and that Mr. Solomon, believing him to be clothed with this authority, dealt with him as such.

Indeed, Mr. Hoskins concedes that for some purposes he actually did delegate certain authority to Mr. Gart.

If you find that Mr. Gart was the agent of Music Research, Inc. then any knowledge of the true facts underlying the recording arrangement between John Hurt and Vanguard which Mr. Gart had may be treated by you as knowledge possessed by Music Research, Inc.

Now, the final element of the fraud claim for your determination is whether the plaintiff was damaged as a result of any reliance on any misrepresentation, as previously discussed, and I will have more to say about the issue of damages later in my instructions.

I will say to you also that there was nothing unlawful in itself in clipping off the name of the Music Research, Inc. from the bottom of the contract of Hurt with Vanguard.. There is a dispute in this case about who did it. Mr. Solomon says he received the contract with the signature lines already cut off, and Mr. Gart says it was intact but unsigned by Hoskins when he sent it to Vanguard.

This is a dispute you may resolve according to whom you believe. You have heard the witnesses. You have

observed their demeanor. You have listened to their testimony. If you find that Vanguard or its officers cut it off, you may give that fact such weight as circumstantial evidence of an intent to defraud Music Research, Inc. as you deem proper under all of the circumstances of this case.

You are the sole judges of the facts in this case, and you determine the inferences flowing from the facts, and you decide what witnesses you believe and what witnesses you do not believe. I will say to you, however, that the clipping of the name is merely evidence in the case, and there are no damages flowing directly from the fact that the name was clipped off, regardless of who you ultimately determine did the actual clipping.

Now, there is no requirement in this case to bring in any expert. The jury can make a determination based on what you believe of the testimony on the part of all the witnesses you heard here, and you must decide this case on the evidence, no matter who brought it in, which you do believe and the inferences fairly flowing therefrom.

You may not decide this case based on any conjecture or guesswork or suspicion about what evidence might have been brought in.

You may consider the lack or absence of evidence in reaching your decision.

Now, a word about such witnesses who did testify here who claim to be experts.

The rules of evidence ordinarily do not permit anybody to testify as to opinions or conclusions, and an exception to this rule exists as to those persons who are called expert witnesses.

If a person, by education or experience, has become an expert in some art or science or profession or calling, or if he has become an expert in the marketability of certain types of materials or in the value of certain materials in which he professes to be an expert, he may state his opinion under oath as to any relevant and material matters, such as marketability or value or the effect upon the market of certain facts or circumstances, and he may state the reasons for his opinion.

You will recall that we had some expert testimony about the record industry generally, about the marketability under certain assumed circumstances of certain John Hurt albums or records and the value of certain tapes and other matters.

Insofar as these expert witnesses are concerned, the opinion of such an expert is based on what he himself observed or testified to having observed or those matters which the attorney who questioned him asked him to assume.

Now, you may reject an expert's opinion if you find the facts to be different from those which formed the basis for his opinion. You may reject his opinion if after careful consideration of all the evidence in the case you disagree with his opinion.

In other words, you are not required to accept an expert's opinion to the exclusion of the facts and circumstances disclosed by other testimony and evidence or appearing as a result of the exercise of your common sense. Such an opinion is subject to the same rules concerning reliability as the testimony of any other witness.

If you think the expert is not qualified to give the opinion or lacks the education or training or experience to substantiate a valid opinion, you may disregard his testimony.

Expert testimony is entitled to such weight as you find the expert's qualifications in his field warrant and as you find and according to how you find the underlying assumptions he made to be reliable or unreliable. These opinions must be considered by you, but they are not controlling on your judgment.

I am going to mention another topic, and that is the statute of limitations.

It is the policy of the law to encourage people who

have any claims to bring any claims which they have promptly into court. The law also provides that after a certain period of time a party ought to be granted repose and not have to defend against stale charges emanating from transactions and occurrences which took place in the distant past.

The law requires that an action for fraud must be commenced -- when I say "commenced" I mean filed in court -- within six years of the commission of the fraud or within two years' time from the date upon which the facts constituting the fraud were discovered or with reasonable diligence could have been discovered.

Now, what are the dates applied to this lawsuit? Well, it is beyond dispute that this particular lawsuit was commenced by Music Research, Inc. on September 26, 1973. Thus, for you to find for the plaintiff on this issue of limitations, you must find either that the fraud, if there was one, was committed some time after January 26, 1967 or that the plaintiff learned of the facts constituting the claimed fraud at some time after January 26, 1971 and that through the exercise of reasonable diligence he could not have learned of this earlier than January 26, 1971.

Well, what does "reasonable diligence" mean? That means using or exercising that measure of care and effort which a reasonably prudent man would exercise in a matter of

some importance to him.

In summary, therefore, I remind you that the plaintiff's claims, even if valid, will be barred by the statute of limitations unless you find either that the fraud occurred after January 26, 1967 or that the plaintiff did not discover the facts constituting the fraud until January 26, 1971 or later and could not have, in the exercise of reasonable diligence, discovered the fraud until January 26, 1971 or some time thereafter.

Now, as I understand the contentions of the parties, the plaintiff asserts that the coming out of the third record gave him notice of the alleged fraud. That, of course, is entirely a matter for your determination according to the evidence in this case, like all other fact matters that are at issue here.

A word about damages:

If you find that the plaintiff has proved its claim with respect to fraud, you must return a verdict in a sum of money which would justly and fairly compensate the plaintiff for all losses directly resulting from the defendant's fraudulent acts. The measure of damages for fraud is indemnity for the actual pecuniary loss sustained.

Generally, actual pecuniary loss is measured by the difference between the value of what the plaintiff parted

with and the value of what he received. Therefore, if you find that the plaintiff has proved its claim with respect to fraud, it would be entitled to recover all their expenses incurred in the recording and preparation of their John Hurt Memorial Anthology, which the plaintiff alleges it was unable to release and sell; that is, assuming also if you find it was because of the fraud that the plaintiff, Music Research, could not complete its contract with Adelphi to record and release that so-called John Hurt Memorial Anthology.

Now, you will recall I told you earlier Adelphi Records, Inc. is out of this case. You are not to concern yourselves with Adelphi Records' loss, but if you find the facts to be as I have just suggested to you, you will address yourselves to the question of what were the losses of Music Research, Inc. arising out of the claimed frustration of the contract it had with Adelphi. That contract is in evidence, and you may look at it.

You may also allow the plaintiff to recover the difference, if any, between the fair market value of Music Research's inventory of John Hurt's tapes before Vanguard's release and sale of The Best of John Hurt and John Hurt's Last Sessions Albums and the value of the inventory at the present time, that is, after the release and sale of those albums.

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In considering that value, you may consider whether or not Vanguard continues in possession of other John Hurt tapes. If, however, you find that the plaintiff did or in the exercise of reasonable diligence should have ascertained the existence of and the terms of the Hurt-Vanguard agreement at a time when plaintiff had not yet suffered all of the damages ultimately suffered, then the plaintiff's recovery will be limited to the damages it suffered prior to the time it learned or should have learned of the circumstances of the claimed fraud.

In fixing damage, you are not to be actuated by any motive to be overly generous nor by any desire to be unduly conservative. You are to be fair in the amount of fixing any damages.

The purpose of damages is to compensate and not to punish anybody. You are to fix your damages, if you reach that point in this case, without reference to any emotion.

A word about deliberating as jurors.

It is your duty to try the issues in this case fairly and impartially and without fear or favor. Each juror is entitled to his or her own opinion and to express it in the jury room. You are required to exchange views with your fellow jurors. That is the purpose of jury deliberation: to talk about the case, discuss the evidence with each other and

to reach a just verdict based on the evidence and as a result of your deliberations.

If any one of you has a point of view and if after reasoning with your fellow jurors it appears that your judgment is open to question, then, of course, you should have no hesitancy in yielding your point of view and going along with the others -- that is, if and only if you are convinced that the opposite point of view is really one that satisfies your individual judgment and conscience. However, you are not to give up your point of view that you conscientiously believe in simply because you are outnumbered or outweighed by the other jurors.

The vote of each juror is of equal value and importance in this case, and to return any verdict it must be unanimous.

Damages, if you reach the question of damages, are to be computed by discussion and deliberation, and it is absolutely improper to use any short-cut such as dividing up the different figures that the people believe in or splitting the difference or anything like that. Damages, if you reach damages, must be reached as a result of discussion and agreement.

The forelady here will be Miss McWade, and when the jury has reached a verdict, you will tell the marshal that

the jury has reached a verdict, and then you will come back into court and announce your verdict.

It may well be that the jury will want to see the exhibits. If you want to see the exhibits, you will send out a note. That note may say, "Please send us all the exhibits," or if there are only particular exhibits you want to see and you don't want to see the rest, you can call for the exhibits that the jury wants to see.

Now, it is possible you may have some question or there may be something about my instructions that is unclear, and if that is the case you can send out a note asking for whatever will clear it up. Before you do that, I hope you will discuss it fully.

The same thing goes for reading testimony. We can read testimony, but before you ask us to read any, because it is quite lengthy and difficult to do, I do request that you each try to exhaust your personal recollections in discussion, and if after discussion you cannot resolve it, of course I will be entirely willing to have you come back here and listen to any part of the paper tapes which have been made here read. But, as I say, don't do that unless you really need to do it.

In communicating with the Court with respect to any note, do not say in the note how the opinion of the jury may

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then be divided. I don't want to know about that, and don't write it in any note.

To guide you in stating your verdict, it will be done in this fashion:

If the jury finds that the plaintiff failed to prove a claim here by a preponderance of the credible evidence to your satisfaction, then the verdict of the jury will be announced by saying, "We, the jury, find for the defendant." If, on the other hand, the jury finds that the plaintiff has satisfied that requirement and you have computed his damages, you will then announce your verdict by saying, "We find for the plaintiff," and then you will state the amount of the verdict in dollars.

At this time, Mrs. Sweeden and Mrs. Dorset, I want to thank both of you, and since all of the jury remained healthy and in full attendance here, I don't need either of you to deliberate, and you are excused at this time with the thanks of the Court. Please don't discuss the case or express any opinion about it until after the verdict has been announced by the other jurors. You are now excused from the courtroom, and the clerk has your certification here of your service. You may withdraw from the courtroom.

(The alternate jurors left the courtroom.)

THE COURT: Will you swear the U. S. Marshal,

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(The deputy marshal was duly sworn.)

THE COURT: It has been brought to my attention, members of the jury, that I made a mistake in giving you the relevant dates, and I will now go over those dates again.

It is beyond dispute that the lawsuit was commenced January 26, 1973. That would mean that in order to find for the plaintiff it must appear either the fraud was commenced some time after January 26, 1967 or that the plaintiff learned of the facts constituting the alleged fraud at some time after January 26, 1971 and with reasonable diligence could not have learned of this earlier than January 26, 1971.

I am told that I had a slip of the tongue, and I said "September". Now, if that is so, please strike the "September" out of your minds and recognize that the dates that are relevant here are all January dates.

Please just remain seated now in the jury box, and don't discuss the case, because there may be some additional corrections that I may have to make in my charge, or there may be some additional information that I am able to give you.

Counsel may approach the side bar.

(At the side bar:)

THE COURT: Do you have any additional requests?

MR. NEWMAN: Yes, your Honor.

I believe that your Honor in listing the misrepresentations alleged to have been made here either stated or implied that all of them had to be proved. Our claim is that only one of them is sufficient to be proved.

THE COURT: All right. Anything else?

MR. NEWMAN: With respect to the discussion on the authority of Mr. Gart, I don't believe that the charge adequately covered the situation which the jury might be permitted to infer from the facts that Mr. Gart was given limited authority.

THE COURT: You have an exception as to that.

MR. NEWMAN: But not to sign.

THE COURT: He did not sign Hoskins' name. You have an exception.

What else?

MR. NEWMAN: That is all I have.

THE COURT: Do you have anything?

MR. CONCAGH: I have none, your Honor.

THE COURT: All right.

MR. CONCAGH: None now. I had one, but I will withdraw it. I have none.

THE COURT: All right. No exceptions and no additional requests?

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MR. CONCAGH: No exceptions to your Honor's charge.

THE COURT: All right.

(In open court:)

THE COURT: Members of the jury, I may have been slightly unclear as to one particular matter that I did mention to you, and I would like to amplify it very briefly, if I may.

I listed certain claimed misrepresentations, and I am sure you recall that they were listed by me and then I went on to say that if you found they were made by words or actions, you must then consider whether the representations as they were made were true or false.

Any single representation if so made and if false will be sufficient. It is not a requirement in this case that the plaintiff prove all of the claimed misrepresentations. However, any misrepresentation which you do find is proved, if any, must be tested by you as to the question of materiality and reliance and all of the other elements which I previously mentioned.

It is not necessary for the plaintiff in order to prevail to prove to your satisfaction each and every one of the claimed misrepresentations, just so long as the elements of the cause of action have been found by you to have been satisfied as to any single misrepresentation, and those

element[illegible]e that there was a misrepresentation of fact made, it was untrue, it was made with intent to deceive, the person to whom it was made believed it and justifiably relied upon it, and as a result of that reliance a monetary loss occurred.

Proof of all of those elements as to any single one of the misrepresentations, which I previously listed, would be sufficient.

All right. Would you kindly withdraw to the jury room and begin your deliberations.

(At 4:05 p.m., the jury, in the custody of the deputy marshal, left the courtroom to begin deliberating upon a verdict.)

THE COURT: We will be in recess. Please stand by. Get your exhibits ready and give them to the clerk, and each of you is charged with the responsibility of making sure that he has the proper exhibits available and none other.

Is it stipulated that if they send a note which is identifiable, I can have the clerk comply without convening you all again?

MR. CONCAGH: Yes, your Honor.

THE COURT: Do you so stipulate?

MR. NEWMAN: Yes, your Honor.

May I just inquire as to whether the actual physical request to admit was admitted in evidence?

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THE COURT: I did not so regard it. It was read to the jury, the same as the pre-trial order. If they ask for it, I will read it to them again.

Very well. Let's be in recess.

(Recess.)

(At 4:20 p.m., a note was received from the jury.)

(Court's Exhibit 1 marked for identification.)

(At 4:45 p.m., a note was received from the jury.)

(Court's Exhibit 2 marked for identification.)

(In open court, in the absence of the jury:)

THE COURT: Gentlemen, I have a note, which has been marked Court's Exhibit 2. It reads:

"What is the date of the release of the third album?"

That date has been stipulated to in the record. Will you refresh my recollection as to what it is?

MR. DAVIDSON: The date stipulated was April of 1971, according to my notes.

MR. CONAGH: I will check that, your Honor.

I don't have those notes here today.

MR. NEWMAN: My notes are the same, your Honor.

MR. CONAGH: Mr. Vassallo has notes on that, your Honor.

MR. NEWMAN: Did your Honor refer to that date in your charge?

THE COURT: No; I did not. Not that date. That date was stipulated on the record.

MR. NEWMAN: I know.

THE COURT: Rather than ask the court reporter to look for it, I simply asked Mr. Conagh to tell me what it is. You say it is April of '71?

MR. NEWMAN: That is right, your Honor.

MR. POWELL: I don't believe the release date is printed on it.

MR. VASSALLO: My notes indicate April of 1971 in the direct examination of Mr. Hoskins.

THE COURT: Will you accept that?

MR. CONAGH: Yes. I will accept April of 1971.

MR. NEWMAN: April of 1971, your Honor.

THE COURT: Is it satisfactory if I write them a note to that effect?

MR. CONAGH: Yes.

THE COURT: All right with you, Mr. Newman?

MR. NEWMAN: That is all right; yes, your Honor.

THE COURT: I am submitting a note to the marshal to carry in there, saying:

"The release date of the third album is April of 1971."

I have placed my initials on it. If anyone would

care to look at it, he may.

The marshal will take it in, and we will be in recess.

(Recess.)

(At 5:10 p.m. In open court, jury present.)

THE CLERK: Madam Forelady, have you agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: How do you find? Do you find for the plaintiff or for the defendant?

THE FORELADY: We, the jury, find for the plaintiff and award damages of $275,000.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded. You say you find for the plaintiff in the amount of $275,000.

(Each member of the jury, upon being asked by the clerk if the verdict as recorded was his or her verdict, answered affirmatively.)

THE COURT: All right. I will direct that the verdict be recorded by the clerk of the court.

At this time, I thank the jurors for their attendance here and their attention to the case. You are now released from any instructions or directions on my part. You have all your civil rights, and you can do or say anything

you like.

By the same token, no person can harass you or question you or ask you about your verdict and about your reasons for deciding the case in the fashion you did. If anyone attempts to conduct any such inquiry of you, you are free to tell them not to bother you, and if they do, you report it to the Chief Judge of this court.

The clerk has your certificates, which you can obtain on the way out the door,and you are excused with the thanks of the Court.

(The jury left the courtroom.)

THE COURT: I will direct the settlement of a judgment on notice. I think five days' notice will be enough. The judgment is to cover all of the matters set forth in my rulings at the close of the plaintiff's case and also to award judgment in accordance with the verdict.

MR. CONCAGH: Your Honor, at this time the defendant, Vangard Recording Society, Inc., moves, pursuant to the Federal Rules, for a judgment notwithstanding the verdict.

THE COURT: Motion denied. It is refarded as an issue of fact, and the jury had a right to decide it.

MR. CONCAGH: We further move to reduce the verdict and set aside the verdict as being excessive as against the weight of the credible evidence in this case.

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THE COURT: I deny that motion, too.

All right. Anything else?

MR. CONCAGH: Nothing else, your Honor.

THE COURT: The whole matter revolves about whom you believe, and the jury has the right to believe. I don't resolve issues of credibility.

All right, gentlemen.

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
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64E,73,72,71,74,70		249
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90,91,92,63-A		396

PLAINTIFFS' EXHIBITS

EXHIBIT 1 - MANAGEMENT AGREEMENT DATED MARCH 15, 1963 BETWEEN MUSIC RESEARCH INC. AND JOHN S. HURT

MANAGEMENT AGREEMENT

MADE this 15th day of March, 1963, by and between MUSIC RESEARCH, INCORPORATED, of 1741 K Street, Northwest, Washington 6, District of Columbia, hereinafter referred to as "Manager," and JOHN S. HURT, also known as Mississippi John Hurt, of Avalon, Mississippi, hereinafter referred to as "Artist,"

WITNESSETH

WHEREAS, Manager has the knowledge and skill to effectively promote the professional welfare of Artist to the mutual profit of both Manager and Artist, and Manager desires to undertake such promotion, and

WHEREAS, Manager is willing to expend time, effort and money for the development of the career and profession of Artist, and

WHEREAS, Artist desires to obtain the counsel, advice, guidance and management of Manager in the entertainment industry, having full faith in the ability of Manager to effectively promote his career;

NOW THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable considerations herein specified, the parties hereto mutually agree and covenant as follows:

1. Artist hereby employs Manager to render its service to Artist in Artist's capacity of entertainer, performer, singer, musician, instrumentalist, and artist, as Artist's sole and exclusive personal representative, manager and advisor in the entertainment industry and in music research, including but not limited to appearances in vaudeville, motion pictures, legitimate theatres, television, radio broadcasting, recording, for phonograph records, electrical transcriptions, appearances at hotels, restaurants, clubs, schools, colleges, night clubs, bars, cabarets, coffee houses, and all other appearances in any way connected with or related to the entertainment industry or music research in the United States, its territories and possessions and in all foreign countries throughout the world. The aforesaid enumeration shall not be deemed a limitation upon the services Artist shall render for Manager, but merely a partial enumeration by way of illustration.

2. Manager agrees that it will perform such services as personal representative, manager, and advisor as in its discretion are required to advance the best interests of Artist in Artist's capacity of entertainer, performer, singer, instrumentalist, musician and artist.

3. Artist does not hereby engage or require Manager to procure or provide engagements for Artist or to act as a booking agent in his behalf, but Artist does hereby grant to Manager the exclusive right to arrange for such services from others on behalf of Artist and/or to provide such services itself in its sole discretion.

4. Artist acknowledges that Manager is engaged in a similar capacity or will be engaged in a similar capacity for others, and Artist agrees that Manager is not obligated to devote his time and attention exclusively to Artist. It is agreed that Manager may engage in active roles for other Artists, record companies, publishing companies or other entertainment interests, in any capacity whatsoever. Manager may assign this contract to any other individual provided however that the terms hereof are not altered except for substitution of another party or parties for Manager.

5. Artist agrees to refer to Manager all verbal or written proposals, communications, or requests for Artist's appearances and services, and Artist agrees that Manager may publicly represent itself as acting for Artist in the capacity herein set forth. For this purpose Manager shall have the right to use Artist's photograph and his name for advertising materials, and to authorize others to use Artist's name and photograph in such manner as Manager may deem advisable, "name" being any professional or legal name of Artist individually or as a member of a group or as a group.

BEST COPY AVAILABLE

6. Artist represents that and warrants that he has the exclusive and legal right to use the trade or professional name set forth herein, and Artist hereby transfers, assigns and conveys all right, title and interest in and to the use of said name to Manager. Artist may use said name professionally, only as Manager, within its sole discretion and control shall permit, direct or allow. Artist agrees and warrants that Artist shall not, nor permit anyone else to, use said name except with permission of Manager and under and subject to the terms and conditions and provisions set forth by Manager. Artist shall not adopt any other name except with Manager's permission.

7. Artist hereby appoints Manager his true and lawful attorney-in-fact during the term of this agreement, or renewal thereof, to sign and make on Artist's behalf all agreements in connection with all engagements and arrangements contemplated herein whereby Artist's name, likeness, services or talents are mentioned, referred to or utilized, and to collect for and on behalf of Artist all proceeds, monies or other compensation within the scope of this agreement or renewal thereof. Artist agrees to perform all engagements and to make all appearances in accordance with all agreements entered into by Manager on Artist's behalf.

8. Artist hereby represents and warrants that he has no outstanding agreements nor has he made any other arrangements, oral or written, which shall in any manner interfere with or prevent him from carrying out the terms and conditions of this agreement. Artist further agrees that he will not, during the term hereof, engage any other person, firm or corporation to act in the capacity of personal manager, representative or advisor. This agreement shall supercede any former agreements that may exist between Manager and Artist regarding the subject matter of this agreement.

9. As compensation for Manager's services herein, Artist agrees to pay Manager a sum equal to Fifty percent (50%) of all gross compensation received by Artist from all sources as the result of Artist's professional activities enumerated but not limited to those in Paragraph "1." herein, and from any and all agreements entered into during the term hereof, or from any and all extensions, renewals or substitutions hereof, regardless of whether the terms of said agreements or said extensions, renewals or substitutions extend beyond the term of this agreement.

10. Artist agrees that he will pay to Manager the compensation as agreed in Paragraph "9." herein immediately upon receipt by Artist of any monies received for his services as aforesaid. Artist hereby further agrees to reimburse Manager with respect to any and all expenses Manager may incur on Artist's behalf, but only to the extent of royalties received by Artist. It is further agreed that Manager shall have the right to deduct from royalties paid to him by others for Artist such amounts as are due Manager by the terms of this agreement, and pay the balance thereof to Artist.

11. Artist further covenants and agrees that he will faithfully and conscientiously and to the best of his ability give such auditions and submit to such tests as will, from time to time, be arranged for Artist by Manager using such material in connection therewith as Manager may direct Artist to use, and where engagements are obtained for Artist with respect to his activities hereunder, Artist will fulfill and perform such engagements to the very best of his ability.

12. Artist hereby specifically authorizes and empowers Manager, whenever Manager may deem the same necessary in order to further promote and advance Artist's career hereunder, to employ the services of a booking agent or agents for such purpose, and Artist agrees to pay one-half of the cost of such services.

13. Artist agrees that Manager shall have the exclusive right to make recordings of Artist's music and performances during the term of this agreement, or in Manager's discretion to contract with others for making recordings of Artist's music and performances on behalf of Artist. In all cases of Manager producing recordings of Artist's music and performances on records bearing the label of Manager, or the trademark of Manager, or on tape or other media bearing said label or trademark of Manager, Manager shall bear the expenses of producing such recordings, and Artist shall be compensated at the rate of

fifteen cents ($.15) per record sold where said record contains only the art of Artist and two cents ($.02) per selection or "track" where said record contains the art of others as well as the art of Artist, per such record sold, Manager to bear all expenses of sales of such records as well as all expenses of production of such records. The terms, "record," and "records," shall be construed to include the terms, "tape," and "tapes," as well as any other recording media. This method of compensation to Artist with regard to recordings produced on Manager's label or under Manager's trademark is an exception to the method of compensation provided for in Paragraph "9." herein for all other services rendered to Artist by Manager. In all cases where Manager elects to contract with other recording companies or individuals on behalf of Artist, the method of compensation shall be that provided for in Paragraph "9."

14. With regard to any musical composition or lyrics or both which Artist represents to Manager to be Artist's original art, such musical composition or lyrics having been composed or written or created by Artist at any time in the past but not copyrighted or which shall be composed or written during the term of this contract, Artist agrees to permit Manager to take out and procure a copyright or copyrights thereon in the name of Manager in the United States or elsewhere, and such copyrights shall become the absolute property of Manager forever. Artist further agrees to indemnify Manager against all damage in consequence of any such copyrighted material or other material used by Artist containing any infringement of copyright or libelous matters.

15. The term of this agreement shall be for a period of five (5) years from the date hereof. If at the end of this term of the contract, Artist shall have earned a gross aggregate sum in excess of five hundred Dollars, ($ 500.00) during the said contract period as a result of Artist's professional activities as set forth in Paragraph "1." herein, then, and in such event, this agreement shall be automatically extended and renewed for an additional term under the same provisions and terms hereof, such additional term to be also of five (5) years duration, except if Manager shall give notice prior to said renewal or extension that it does not desire to renew or extend the same.

16. If any part of this agreement should be held invalid by a competent authority, the remainder shall nevertheless remain valid and binding on the parties hereto.

IN WITNESS WHEREOF, the undersigned as parties hereto have hereunto set their hands and seals on the date first hereinabove written.

John S. Hurt [SEAL]

JOHN S. HURT, Artist

MUSIC RESEARCH, INCORPORATED

By: Richard K. Spottswood, Pres.

Manager

ATTEST:

Louise C. D. Spottswood

Secretary

EXHIBIT 11 - AGREEMENT DATED JUNE 8, 1970 BETWEEN ADELPHI STUDIOS AND MUSIC RESEARCH INC.

AGREEMENT

THIS AGREEMENT MADE this 8th day of June, 1970 by and between ADELPHI STUDIOS of Silver Spring, Maryland hereinafter known as ADELPHI; and MUSIC RESEARCH INCORPORATED, a District of Columbia corporation, hereinafter known as the CORPORATION.

WITNESSETH:

WHEREAS, the CORPORATION is the owner of several hitherto unpublished tape recordings of the work of their artist, MISSISSIPPI JOHN HURT, and

WHEREAS ADELPHI is desirous of publishing certain of these recordings in the form of phonograph records, and

WHEREAS, the CORPORATION is desirous of having ADELPHI publish the said recordings in the form of phonograph records,

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto, ADELPHI and the CORPORATION, do hereby mutually covenant and agree as follows:

1. ADELPHI shall pay all costs incident to the production and promotion except in the case of publisher's fees which shall be borne jointly by ADELPHI and the CORPORATION.

2. ADELPHI shall pay the CORPORATION at the rate of One Dollar and Twenty-five Cents ($1.25) per 2-record LP set sold as consideration for the use of the CORPORATION's tape recordings; ADELPHI guarantees to sell at least Two Thousand (2,000) LP sets during the first year of the term of this contract, and to pay the CORPORATION at least the sum of Two Thousand, Five Hundred Dollars ($2,500.00), including an advance of Seven Hundred Dollars ($700.00) against that guaranteed amount, payable upon signing of this contract.

3. ADELPHI hereby agrees that the CORPORATION shall have the final say as to what performances of their artist are selected for the LP record sets to be produced by ADELPHI, and ADELPHI shall obtain the signed consent of at least one officer of the CORPORATION to the use of the songs finally selected from the performances available on the CORPORATION's tape recordings. It is understood that the parties hereto will work closely together in order to produce LP recordings of the finest possible quality.

4. It is understood that the tape recordings from which the final selections shall be drawn for use in the proposed LP recordings shall remain the property of the CORPORATION , but that masters, mothers and stampers used in the production of the said LP recordings shall be and remain the property of ADELPHI.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 8th day of June, 1970.

ADELPHI STUDIOS

By: Eugene Rosenthal (SEAL)
Eugene Rosenthal, Owner

MUSIC RESEARCH, INCORPORATED

Thomas B. Hoskins
Thomas B. Hoskins, President

(SEAL)

ATTEST:

Leland M. Talbot, III
Secretary

EXHIBIT 13 - LETTER DATED JULY 21, 1964 FROM MUSIC RESEARCH TO VANGUARD RECORDING WITH SIGNED CONTRACT FOR JOHN HUNT

Music Research, Incorporated
2023 N. Woodstock Street
Arlington, Va. 22207
July 21, 1964

Mr. Maynard Solomon
Vanguard Recording Society, Inc.
154 West 14 Street
New York 11, N. Y.

Dear Mr. Solomon:

Thank you for your letters and the contracts. We enclose the signed contracts for Rev. Wilkins and John Hurt. We are sorry, after putting you to the trouble of sending one for Skip James, that he will not be able to record. He has not played for seven years, and needs a good bit of practice before he will be ready to make any new records. We hope that by next year's Festival he will be sounding as masterful as ever.

We are looking forward to the Festival and hope to see you there.

Sincerely,

(Mrs.) Louisa Spottswood

PLAINTIFF
EXHIBIT
U. S. DIST. COURT.
S. D. OF N. Y.
13

VANGUARD RECORDING SOCIETY INC. 492a

THE BACH GUILD

June 20, 1964

Mississippi John Hurt
c/o Music Research, Inc.
2023 N. Woodstock St.
Arlington, Va. 22207

Dear Mississippi John:

In return for good and valuable consideration paid by us, you hereby give us the exclusive right to record all musical selections and performances to be given by you at the Newport Folk Festival at Newport, Rhode Island on July 23, 24, 25 and 26, 1964, and any postponed dates, together with the right to use your name, likeness and biographical material for advertising, trade and other purposes, and to manufacture, sell and distribute phonograph records and any other reproductions of all or parts of such performances. This release will also extend to any person or corporation to whom we may assign our rights to manufacture or sell any album or other reproduction made of the above performances.

We agree that you may be permitted to record selections used by us hereunder for any other person, firm or corporation, without restriction by us.

You agree that each record shall be subject to our approval as satisfactory for manufacture and sale, and that all recordings and the performances therein shall be entirely our property. You hereby warrant and represent that you are free to give us this right and that no prior agreement or performance interfere therewith.

For each selection released on phonograph records by us, we shall pay you the sum of Fifty Dollars ($50.00)---------- or at the rate of A. F. of M. union scale if applicable, whichever is higher, on or before the date of release. Your accompaniments for other performers shall be paid at the rate of A. F. of M. union scale, on or before the date of release.

Very truly yours,

VANGUARD RECORDING SOC., INC.

Maynard Solomon

ABOVE AGREED TO:

Lou Spottswood for
MISSISSIPPI JOHN HURT

Mississippi John Hurt

EXHIBIT 16 - LETTER DATED OCTOBER 23, 1964 FROM MESSRS. POWELL, HORKAN & POWELL TO JAC HOLZMAN

LAW OFFICES
POWELL, HORKAN & POWELL
1741 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONES
296-4047
525-3474

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
WILLIAM J. POWELL

VIRGINIA OFFICES
UPPERVILLE, VIRGINIA
TELEPHONE 592-3252
GLOUCESTER, VIRGINIA
TELEPHONE OX 3-6681

October 23, 1964

Mr. Jac Holzman, President
Electra Recordings
51 West 51st Street
New York 19, New York

RE: Music Research, Incorporated v. Louisa C. H. Spottswood, et al., In Chancery No. 15032, Circuit Court of Arlington County, Va.

Dear Mr. Holzman:

This is to advise you that neither Mrs. Louisa C. H. Spottswood nor her husband, Mr. Richard K. Spottswood, both of whom are defendants in the subject cause of action, have any rights whatever in and to, or rights to perform any part of, the contract of Music Research, Incorporated, with John S. Hurt, also known as Mississippi John Hurt. The same is true regarding any of the other contracts of Music Research, Incorporated, with other artists.

This is also to advise you that although Mrs. Louisa C. H. Spottswood may have physical possession of certain masters, mothers and stampers of recordings of the music of Mississippi John Hurt and others, she does not have, nor will any purchaser of these masters, mothers and stampers have, any right whatsoever to produce records from them, since such right is an incident of the aforesaid contracts and is vested solely in Music Research, Incorporated, of which corporation neither Mr. Nor Mrs. Spottswood is an officer or employee or agent of any kind.

This will also advise you that within five days a temporary restraining order and a permanent injunction will be filed in the subject cause of action to prevent Mrs. Spottswood from interfering in the contracts of Music Research, Incorporated, and in its business affairs in any manner whatsoever.

This will be notice to you, and to all who receive copies of this letter, that to deal with Mr. or Mrs. Spottswood in any matter involving the property or rights of Music Research, Incorporated, is to do so at your peril.

Very truly yours,

William J. Powell

William J. Powell
General Counsel,
Music Research, Incorporated

Copy to:

Vanguard Recording Society
Globe Productions, Inc.
Plastylite Corporation
Modern Distributing Co.
Herbert S. Cart

EXHIBIT 54 - MEMORANDUM RELATING TO CONTRACT

Rexvxx contracg with Mississipi John Hurt
c/o Herbert Gart Management

Rx terms are

2 LP's per year

$2000.00 per LP advance

4oyalty 5% of standard terms

25% of foreign income.

1 year, 1 option

Dept Van
EXHIBIT C
5/14/74 E.G.
2 HB

contract to be signed also by TOM HOSKINS, personal manager and
HERBERT GART, business manager

RIDER:

1. Ixxixvihaxx Youxhavevadxixudvaxxthvkxxxxnyxmatxrixivexuxinuxiyx
1. You have recorded two LP's for the Piedmont label, titled respectively MISSISSIPPI JOHN HURT and WORRIED BLUES, You warrant that you have recorded no additional material for any person, firm or corporation within the past five (5) years. You additionally warrant that you will not release or cause to be released any recordings by you during the term of our agreement.
Both
2. Youx and Piedmont Recordsx represent and agree that we shall have the right to re-record any material previously recorded by you on the two aboveOmentioned LP's.

4 copies. 3 to Herb Gart, with covering letter. Dear Herb: Herewith three copies of our agreement with Mississippi John Hurt, incorporating all the terms we agreed upon.

In respect of your request for a fixed dollar amount per record sold, rather than a royalty percentage, xexmbxx I believe that this would work to Mr. Hurt's disadvantage, since the list price of stereo discs is at present $1.00 more than mono, and other forms of musical reproduction are also often at higher prices (e.g. xx pre-recorded tape). Furthermore, such a xextxxx formula would not permit release of singles or other lower-priced recordings. xtxuuxxpxuxuntxlistv pxicuxxufv$4x72vandvx5x72yxthexrmyxitxxpxvxuntxgxsxwnxkvsutxixvv

We trust you will find all in order. If so, please have Mr. Hurt, Mr. Hoskins (representing Piedmont and Mr. Hurt both) and yourself sign and initial all copies and return to us for counter-signature.

We look forward to a successful serious of recordings with Mr. Hurt.

file Hurt

Music Research Inc. Personal managers, record co. and ~~publishers~~ co-publishers.

Tom Hoskins.

own Piedmont and Bullfrog labels. They released two LP's by Miss John Hurt. We can use any of the material on their albums and they cannot use any of the material which we use. Plus, they cannot release any recordings during the 2 year term of our agreemnnt, whether recorded or not.

contract drawn directly with MISSISSIPPI JOHN HURT

should be signed by Tom Hoskins as well, as his personal manager, and Herbert Gart as business manager.

2 years
2 LP's per year
$2000.00 per LP.

EXHIBIT 27 - LETTER DATED APRIL 20,1966 FROM AVALON PRODUCTIONS TO MAYNARD SOLOMON

496a

Avalon Productions

34 PARKER STREET, (617) 876-9837

Cambridge, Mass.,

April 20, 1966

Mr. Maynard Solomon
Vanguard Recording Society
154 West 14th Street
New York City, New York

BEST COPY AVAILABLE

Dear Maynard,

I just came back from Ohio where Son House and John Hurt were in dual concerts last weekend. Traveling with John was quite an experience after a year and a half on the road with Son. John eats anything, sleeps anytime, is always affable and his music is consistently good.

You asked if I wanted you to break the contract (?) that exists between John and Music Research, Inc.? Well, I'm enclosing a copy of it so you can look it over and make your own decision on that. Paragraph Nine gives them 50% of all gross money that John makes and Paragraph Ten says that John pays any and all expenses that the Manager may incur. Paragraph Twelve also says that John will pay additionally half of the booking percenatge. Paragraph Fourteen says that the Manager holds the copyright to any and all John Hurt material and it becomes "the absolute property of Manager forever." Paragraph Fifteen says that the agreement is for five years with an automatic five year renewal.

We both know that this rag isn't worth the paper that it is written on. However, it must be broken fully and completely in order for John to own his own songs. He has never received any money either from his Piedmont sales or from Newport albums. He's been completely in the dark as to where he has played and for how much ever since he started playing again in 1963.

This business is not one where there are "good guys" and "bad guys," but I feel that I can do the best job for John. He likes me and has asked me to travel with him. I guess that the objective one to speak to is Pat Sky, since he knows all the persons involved and has remained detatched and a good friend to John through it all. John told Pat that he wanted me to travel with him but he was afraid of Tom and didn't want to hurt his feelings by telling him he didn't want him around any more.

I really love this man, Maynard, and I have stood by and watched him robbed for over two years. I have just gotten tired of Herb Gart telling him to stay in Mississippi until he sent for him and Tom Hoskins vanishing for months at a time.

From your point of view, an artist traveling sells more records for your company. I don't want John to travel any more than he wants to, but I don't want him not to have the opportunity to travel any less than he wants to. He wants to keep playing and traveling on a limited basis and he is completely unaware that he is an artist in demand.

You make your own decision on this. I have tried to do right for Son, Skip and Booker, and I obviously will do my best to do right for John. He has asked me to meet him in Philadelphia about the middle of next month so he can come to New York to finish recording. Tosh Seeger called me about a Channel 47 program and I told her that the 19th (a Thursday) would be a suitable date. I guess that he could do his recording on the 18th and 19th if that is alright with you.

I hope that you will write to John. His address is: No. #1 North Levee Street, Grenada, Mississippi. He has some definite opinions about this but he is awed and afraid of Tom and wouldn't say anything in your office. Just write to him and I'm willing to be guided by his decision.

I'm sorry that you were put in a bad position last week. I would have done anything to spare John the shock of seeing Tom Hoskins standing there when the elevator doors opened at Vanguard and he was standing there waiting.

Do the best you can on this and give me a call if there are any questions.

Best wishes,

Dick

Dick Waterman

EXHIBIT 28 - LETTER FROM AVALON PRODUCTIONS TO MAYNARD

avalon Productions

34 PARKER STREET, (617) 876-9837

Cambridge, Mass.,

Maynard,

I wrote and mailed the letter last night and forgot to enclose the contract that I was talking about.

Dick Waterman

Def Exhibits
For ID
8/29/71
B

EXHIBIT 29 - LETTER DATED MAY 19, 1966 FROM MISSISSIPPI JOHN HURT TO SANFORD ROSS

May 19, 1966

Mr. Sanford Ross, Esq.
745 Fifth Avenue
New York, N.Y.

Dear Mr. Ross;

This letter is to authorize you to take any and all steps necessary to terminate my agreement of March 15th, 1963, between myself and Music Research Inc., and between myself and Mr. Tom Hoskins.

Thanking you in advance, I am

Sincerely yours,

Mississippi John Hurt

Mississippi John Hurt

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

29

Plaintiff 36 64 id.

500a

EXHIBIT 36 - LETTER DATED AUGUST 22, 1966
FROM MAYNARD SOLOMON TO GEORGE GOLDSTEIN

August 22, 1966

Mr. George E. Goldstein
Goldstein, Goldstein and Lavan
327 South Seventeenth Street
Philadelphia, Penna. 19103

Dear Mr. Goldstein:

Re yours of August 12th, our contract with Mississippi John Hurt was negotiated through Herbert S. Gart Mgmt. of New York and not through Music Research Inc. Unfortunately, therefore, we have no information on the management agreement between Mr. Hurt and Music Research Inc.

With all best wishes, we are

Sincerely,

VANGUARD RECORDING SOC., INC.

MS/jl

Maynard Solomon

EXHIBIT 56 AGREEMENT DATED NOVEMBER 30, 1965 BETWEEN VANGUARD RECORDING AND MISSISSIPPI JOHN HURT (UNSIGNED)

VANGUARD RECORDING SOCIETY INC.

501a

154 WEST 14 STREET, NEW YORK 11, N. Y. : ALGONQUIN 5-7732-5

EXHIBIT 1 E.G.

New York, N. Y.
30th day of November
in the year of 1965

Mississippi John Hurt
c/o Herb Gart Management
161 W. 54th Street
New York, N. Y.

Dear Mr. Hurt:

This letter sets forth the agreement between us for the rendering of your personal services for recording and making phonograph records.

1 - We hereby agree to employ your personal services as a recording artist for the purpose of making phonograph records and you hereby agree to record solely and exclusively for us according to the terms and provisions of this agreement.

2 - Recordings shall be made at recording sessions in studios designated by us, at mutually agreeable times. A minimum of 32 (thirty-two) 45 rpm or 78 rpm record sides shall be recorded during the initial term of this agreement, and additional recordings shall be made at our election. The musical compositions to be recorded shall be mutually agreed upon between you and us, and each recording shall be subject to our approval as satisfactory for manufacture and sale. We shall have the right to call upon you to repeat any work until a satisfactory master recording has been made. You will record additional sides for us under this agreement as requested by us during the term hereof up to a maximum of sides per year.

3 - We will pay you as compensation for your services a royalty of Five percent (5%) of ninety percent (90%) of the retail list price, less Federal Excise Tax and the retail cost of album covers, of all records sold embodying performances hereunder on both sides thereof, and proportionate royalties on a time basis on records sold embodying your performances on less than both sides thereof. On records sold outside the United States, or at discounts greater than fifty-five percent (55%) off list price, we may at our election base the royalty percentages on our actual selling price, F. O. B., New York.

4 - For your services, we will make a nonreturnable payment to you of Two Thousand Dollars ($2,000.00) per long-playing record within thirty (30) days following the satisfactory completion of the necessary recording sessions, and such payments, together with the cost of instrumental and vocal accompaniment, arrangements and copying shall be charged against your cumulative royalties and other payments hereunder if and when earned. We will render an accounting to you within sixty (60) days after June 30th and December 31st of each year during which records made hereunder are sold. Any payments for your services hereunder made through the A. F. of M., A. G. V. A., A. F. T. R. A., etc. shall be a credit against and deducted from the nonreturnable payment hereunder. You will have the right to audit all royalty statements and all other accounts rendered to you provided that demand is made, stating the basis thereof, within one year from the date rendered.

5 - We shall have the right to give, license, lease or sell to any person, firm or company, matrices, stampers or master recordings from which records reproducing all or any of your services hereunder may be manufactured or sold, and we shall have the right to grant permission to any such person, firm or company to use such matrices, stampers or master recordings to manufacture and sell records therefrom provided only that all such transactions shall be at arms length. In the event that we exercise the above rights in connection with any company, foreign or domestic, your payment hereunder, in lieu of the royalty outlined in paragraph 3 above shall be twenty-five (25%)---------- percent of the net royalties or other payments received by us. Payments to you of royalties or fees as aforesaid earned outside of the United States are to be paid only when such royalties or fees are received in the United States by us, and in the dollar equivalent at the rate of exchange at the time we receive payment. In the event that any payments due from abroad are not convertible into United States dollars or you elect to receive same in foreign currency, we shall pay you upon your request your share or any part thereof as requested by you, in kind, but if you do accept any such foreign currencies towards the payment of your share as above, we shall be released pro tanto for such payment.

6 - During the term of this agreement you will not perform for the purpose of making phonograph records for any person other than us, and during a period of five years after the termination of this agreement you will not perform any musical composition or any other material recorded hereunder for any person other than us for the purpose of making phonograph records. You acknowledge that your services are unique and extraordinary.

7 - All masters recorded hereunder and all matrices and phonograph records manufactured therefrom, together with the performances embodied therein, shall be entirely our property, free of any claims whatsoever by you or any person deriving any rights or interests from you. Without limiting the generality of the foregoing, we and/or our subsidiaries, affiliates and licensees shall have the right to make records or other reproductions of the performances embodied in such recordings by any methods now or hereafter known, and to sell, transfer or otherwise deal in the same under any trademarks, tradenames or labels designated by us.

8 - We shall have the right to use and to allow others to use your name and likeness, and biographical material concerning you, for advertising and purposes of trade, and otherwise without restriction, in connection with the phonograph records made hereunder. We shall not use or authorize any direct endorsement by you of any record or performance or commercial product without your prior written consent.

9 - The word "person" in this contract means and includes any individual, partnership, firm, association or organization, whether or not incorporated or operating for profit. This contract cannot be changed or modified orally. We may at our election assign this agreement or any of our rights hereunder. In the event of such assignment we will remain responsible for the fulfillment of the terms of this contract by the assignee.

10 - In any disputes touching upon this agreement the laws of the State of New York shall govern.

11 - If, for any reason, you fail to perform for us in accordance with the provisions of paragraph 2 of this agreement, or if due wholly or partly to any labor controversy or adjustment thereof, or to any other cause not entirely within our control or which we could not by reasonable diligence have avoided, we are materially hampered in the recording, manufacture, distribution or sale of records, or our normal business operations become commercially impractical, then, without limiting our rights in any such event, we shall have the option without liability to suspend operation of paragraph 2 of this agreement for the duration of any such contingency (as of the start of such contingency) by giving you written notice thereof; and, at our election, a period of time equal to the duration of such suspension shall then be added at the end of the then current period of the term hereof, and then such period and the term of this agreement shall be accordingly extended.

12 - You warrant and represent that no prior contract or agreement of any kind entered into by you, or any prior performance by you, and more particularly your right to record any and all compositions recorded hereunder, will interfere in any manner with complete performance of this agreement by both parties hereto.

13 - All compositions written or composed by you and recorded hereunder shall be licensed to us, at our election, at a royalty rate of one cent (1¢) per record side on the basis of ninety percent (90%) of records manufactured and sold. Arranged or adapted versions of musical compositions in the public domain, when furnished by you for recordings hereunder, shall be free of copyright royalties. Any assignment made by you of the ownership or copyright in any such composition or in any such arranged verison of musical compositions in the public domain shall be made by you subject to the provisions hereof.

14 - For purposes of this agreement, "records", "phonograph records", and "recordings" include all forms of recordings and reproductions manufactured or sold primarily for use as home entertainment including, without limiting the generality of the foregoing, magnetic recording tape and any other medium for reproduction of artistic performances for home entertainment now known or which may hereafter become known and including, if it becomes practical, the use of sight with sound for home use.

15 - The standard provisions, laws, rules, by-laws and policies of any American Federation of Musicians agreement are incorporated herein by reference and hereby deemed to be part of this agreement and shall be the exclusive provisions of any labor agreement relating to this contract, and any pension or welfare payments made thereunder pursuant to any labor agreement.

A - This contract shall not become effective unless and until it shall be approved by the International Executive Board of the American Federation of Musicians or by a duly authorized agent thereof.

16 - You grant us the right, from time to time, to use one (1) of your performances in a low-price "sampler" record without payment of royalties.

17 - Whenever and wherever you shall appear in a public performance, such as concert, radio, television, motion pictures or the like, the announcement, advertising and promotional material for such performance shall contain the note that you are a "Vanguard Recording Artist", or "Records Exclusively for Vanguard Records," or some such similar indication, provided that if, by reason of contract difficulties or otherwise, it shall be impossible or impractical for you to secure such notice, your failure to do so shall not be considered a breach of this contract.

18 - The term of this agreement shall be until **January 31, 1966.**
You grant us **one (1)** further option(s) to extend the term of this agreement for additional periods of one (1) year each upon all the terms and conditions herein contained. Any options to extend the term of this agreement may be exercised by us by giving you notice in writing at least thirty (30) days prior to the expiration of such term. Such notice to you may be given by delivery to you personally or by mailing to you at your last address known to us.

Sincerely,

ACCEPTED AND AGREED TO:

VANGUARD RECORDING SOC., INC.

Mississippi John Hurt

By_____

Herb Cart - Business Manager

Tom Hoskins - Personal Manager

RIDER TO AGREEMENT DATED NOVEMBER 30, 1965 BETWEEN
MISSISSIPPI JOHN HURT AND VANGUARD RECORDING SOC., INC.

1 - You have recorded two LP's for the Piedmont label, titled respectively MISSISSIPPI JOHN HURT and WORRIED BLUES. You warrant that you have recorded no additional material for any person, firm or corporation within the past five (5) years. You additionally warrant that you will not release or cause to be released any recordings by you during the term of our agreement.

2 - Both you and Piedmont Records represent and agree that we shall have the right to re-record any material previously recorded by you on the above-mentioned LP's.

EXHIBIT 57 - AGREEMENT DATED NOVEMBER 30, 1965 BETWEEN VANGUARD RECORDING & MISSISSIPPI JOHN HURT (SIGNED)

VANGUARD RECORDING SOCIETY INC.

505a

154 WEST 14 STREET, NEW YORK 11, N. Y. : ALGONQUIN 5-7732-5

New York, N. Y.
30th day of November
in the year of 1965

Mississippi John Hurt
c/o Herb Gart Management
161 W. 54th Street
New York, N. Y.

Dear Mr. Hurt:

This letter sets forth the agreement between us for the rendering of your personal services for recording and making phonograph records.

1 - We hereby agree to employ your personal services as a recording artist for the purpose of making phonograph records and you hereby agree to record solely and exclusively for us according to the terms and provisions of this agreement.

2 - Recordings shall be made at recording sessions in studios designated by us, at mutually agreeable times. A minimum of ~~32 (thirty-two) 45 rpm or 78 rpm~~ 2 LP Records records~~sides~~ shall be recorded during the initial term of this agreement, and additional recordings shall be made at our election. The musical compositions to be recorded shall be mutually agreed upon between you and us, and each recording shall be subject to our approval as satisfactory for manufacture and sale. We shall have the right to call upon you to repeat any work until a satisfactory master recording has been made. ~~You will record additional sides for us under this agreement as requested by us during the term hereof up to a maximum of sides per year.~~

INITIAL HERE

3 - We will pay you as compensation for your services a royalty of Five percent (5%)----------of ninety percent (90%) of the retail list price, less Federal Excise Tax and the ~~percent~~ cost of album covers, of all records sold embodying performances hereunder on both sides thereof, and proportionate royalties on a time basis on records sold embodying your performances on less than both sides thereof. On records sold outside the United States, or at discounts greater than fifty-five percent (55%) off list price, we may at our election base the royalty percentages on our actual selling price, F. O. B., New York. ~~(----)~~ No such discounts may be granted for a period of two years from the release date of such album.

INITIAL HERE

4 - For your services, we will make a nonreturnable payment to you of Two Thousand Dollars $2,000.00) per long-playing record---------- within thirty (30) days following the satisfactory completion of the necessary recording sessions, and such payments, together with the cost of instrumental and vocal accompaniment, arrangements and copying shall be charged against your cumulative royalties and other payments hereunder if and when earned. We will render an accounting to you within sixty (60) days after June 30th and December 31st of each year during which records made hereunder are sold. Any payments for your services hereunder made through the A. F. of M., A. G. V. A., A. F. T. R. A., etc. shall be a credit against and deducted from the nonreturnable payment hereunder. You will have the right to audit all royalty statements and all other accounts rendered to you provided that demand is made, stating the basis thereof, within one year from the date rendered.

INITIAL HERE

506a

5 - We shall have the right to give, license, lease or sell to any person, firm or company, matrices, stampers or master recordings from which records reproducing all or any of your services hereunder may be manufactured or sold, and we shall have the right to grant permission to any such person, firm or company to use such matrices, stampers or master recordings to manufacture and sell records therefrom provided only that all such transactions shall be at arms length. In the event that we exercise the above rights in connection with any company, foreign or domestic, your payment hereunder, in lieu of the royalty outlined in paragraph 3 above shall be twenty-five (25%)---------- percent of the net royalties or other payments received by us. Payments to you of royalties or fees as aforesaid earned outside of the United States are to be paid only when such royalties or fees are received in the United States by us, and in the dollar equivalent at the rate of exchange at the time we receive payment. In the event that any payments due from abroad are not convertible into United States dollars or you elect to receive same in foreign currency, we shall pay you upon your request your share or any part thereof as requested by you, in kind, but if you do accept any such foreign currencies towards the payment of your share as above, we shall be released pro tanto for such payment.

TIAL HERE

6 - During the term of this agreement you will not perform for the purpose of making phonograph records for any person other than us, and during a period of five years after the termination of this agreement you will not perform any musical composition or any other material recorded hereunder for any person other than us for the purpose of making phonograph records. You acknowledge that your services are unique and extraordinary.

7 - All masters recorded hereunder and all matrices and phonograph records manufactured therefrom, together with the performances embodied therein, shall be entirely our property, free of any claims whatsoever by you or any person deriving any rights or interests from you. Without limiting the generality of the foregoing, we and/or our subsidiaries, affiliates and licensees shall have the right to make records or other reproductions of the performances embodied in such recordings by any methods now or hereafter known, and to sell, transfer or otherwise deal in the same under any trademarks, tradenames or labels designated by us.

8 - We shall have the right to use and to allow others to use your name and likeness, and biographical material concerning you, for advertising and purposes of trade, and otherwise without restriction, in connection with the phonograph records made hereunder. We shall not use or authorize any direct endorsement by you of any record or performance or commercial product without your prior written consent.

9 - The word "person" in this contract means and includes any individual, partnership, firm, association or organization, whether or not incorporated or operating for profit. This contract cannot be changed or modified orally. We may at our election assign this agreement or any of our rights hereunder. In the event of such assignment we will remain responsible for the fulfillment of the terms of this contract by the assignee.

10 - In any disputes touching upon this agreement the laws of the State of New York shall govern.

11 - If, for any reason, you fail to perform for us in accordance with the provisions of paragraph 2 of this agreement, or if due wholly or partly to any labor controversy or adjustment thereof, or to any other cause not entirely within our control or which we could not by reasonable diligence have avoided, we are materially hampered in the recording, manufacture, distribution or sale of records, or our normal business operations become commercially impractical, then, without limiting our rights in any such event, we shall have the option without liability to suspend operation of paragraph 2 of this agreement for the duration of any such contingency (as of the start of such contingency) by giving you written notice thereof; and, at our election, a period of time equal to the duration of such suspension shall then be added at the end of the then current period of the term hereof, and then such period and the term of this agreement shall be accordingly extended.

12 - You warrant and represent that no prior contract or agreement of any kind entered into by you, or any prior performance by you, and more particularly your right to record any and all compositions recorded hereunder, will interfere in any manner with complete performance of this agreement by both parties hereto.

13 - All compositions written or composed by you and recorded hereunder shall be licensed to us, at our election, at a royalty rate of one cent (1¢) per record side on the basis of ninety percent (90%) of records manufactured and sold. Arranged or adapted versions of musical compositions in the public domain, when furnished by you for recordings hereunder, shall be free of copyright royalties. Any assignment made by you of the ownership or copyright [illegible] such composition or in any such arranged version of musical compositions in the public domain shall be made by you subject to the provisions hereof.

14 - For purposes of this agreement, "records", "phonograph records", and "recordings" include all forms of recordings and reproductions manufactured or sold primarily for use as home entertainment including, without limiting the generality of the foregoing, magnetic recording tape and any other medium for reproduction of artistic performances for home entertainment now known or which may hereafter become known and including, if it becomes practical, the use of sight with sound for home use.

15. This contract is governed by AFTRA rules + regulations.

15 - The standard provisions, laws, rules, by-laws and policies of any American Federation of Musicians agreement are incorporated herein by reference and hereby deemed to be part of this agreement and shall be the exclusive provisions of any labor agreement relating to this contract, and any pension or welfare payments made thereunder pursuant to any labor agreement.

AFTRA

A - This contract shall not become effective unless and until it shall be approved by the International Executive Board of the American Federation of Musicians or by a duly authorized agent thereof.

16 - You grant us the right, from time to time, to use one (1) of your performances in a low-price "sampler" record without payment of royalties.

17 - Whenever and wherever you shall appear in a public performance, such as concert, radio, television, motion pictures or the like, the announcement, advertising and promotional material for such performance shall contain the note that you are a "Vanguard Recording Artist", or "Records Exclusively for Vanguard Records," or some such similar indication, provided that if, by reason of contract difficulties or otherwise, it shall be impossible or impractical for you to secure such notice, your failure to do so shall not be considered a breach of this contract.

18 - The term of this agreement shall be until January 31, 1967.

INITIAL HERE

You grant us one (1) further option(s) to extend the term of this agreement for additional periods of one (1) year each upon all the terms and conditions herein contained. Any options to extend the term of this agreement may be exercised by us by giving you notice in writing at least thirty (30) days prior to the expiration of such term. Such notice to you may be given by delivery to you personally or by mailing to you at your last address known to us.

Sincerely,

VANGUARD RECORDING SOC., INC.

By [signature]

ACCEPTED AND AGREED TO:

John S. Hurt
Mississippi John Hurt

Herbert S. Gart
Herb Gart - Business Manager

RIDER TO AGREEMENT DATED NOVEMBER 30, 1965 BETWEEN
MISSISSIPPI JOHN HURT AND VANGUARD RECORDING SOC., INC.

1 - You have recorded two LP's for the Piedmont label, titled respectively MISSISSIPPI JOHN HURT and WORRIED BLUES. You ~~warrant that you have recorded no additional material for any person, firm or corporation within the past five (5) years.~~ You ~~additionally~~ warrant that you will not release or cause to be released any recordings by you during the term of our agreement, and an additional two (2) year suspension.

2 - Both you and Piedmont Records represent and agree that we shall have the right to re-record any material previously recorded by you on the above-mentioned LP's.

JSH

EXHIBIT 58 AGREEMENT DATED NOVEMBER 30, 1965 BETWEEN VANGUARD RECORDING & MISSISSIPPI JOHN HURT (SIGNED)

VANGUARD RECORDING SOCIETY INC.

509a

154 WEST 14 STREET · NEW YORK 11, N.Y. · ALGONQUIN 5-2732-5

EXHIBIT 8
5/16/74 E.G.

New York, N. Y.
30th day of November
in the year of 1965

Mississippi John Hurt
c/o Herb Gart Management
161 W. 54th Street
New York, N. Y.

Dear Mr. Hurt:

This letter sets forth the agreement between us for the rendering of your personal services for recording and making phonograph records.

1 - We hereby agree to employ your personal services as a recording artist for the purpose of making phonograph records and you hereby agree to record solely and exclusively for us according to the terms and provisions of this agreement.

2 - Recordings shall be made at recording sessions in studios designated by us, at mutually agreeable times. A minimum of ~~32 (thirty-two) 45 rpm or 16 rpm~~ 2 LP's record~~sides~~ shall be recorded during the initial term of this agreement, and additional recordings shall be made at our election. The musical compositions to be recorded shall be mutually agreed upon between you and us, and each recording shall be subject to our approval as satisfactory for manufacture and sale. We shall have the right to call upon you to repeat any work until a satisfactory master recording has been made. ~~You will record additional sides for us under this agreement as requested by us during the term hereof up to a maximum of~~ ~~sides per year.~~

INITIAL HERE

3 - We will pay you as compensation for your services a royalty of **Five percent (5%)** of ninety percent (90%) of the retail list price, less Federal Excise Tax and the cost of album covers, of all records sold embodying performances hereunder on both sides thereof, and proportionate royalties on a time basis on records sold embodying your performances on less than both sides thereof. On records sold outside the United States, or at discounts greater than fifty-five percent (55%) off list price, we may at our election base the royalty percentages on our actual selling price, F. O. B., New York. No such discounts may be granted for a period of two years from the release date of each album.

INITIAL HERE

4 - For your services, we will make a nonreturnable payment to you of **Two Thousand Dollars $2,000.00) per long-playing record** within thirty (30) days following the satisfactory completion of the necessary recording sessions, and such payments, together with the cost of instrumental and vocal accompaniment, arrangements and copying shall be charged against your cumulative royalties and other payments hereunder if and when earned. We will render an accounting to you within sixty (60) days after June 30th and December 31st of each year during which records made hereunder are sold. Any payments for your services hereunder made through the A. F. of M., A. G. V. A., A. F. T. R. A., etc. shall be a credit against and deducted from the nonreturnable payment hereunder. You will have the right to audit all royalty statements and all other accounts rendered to you provided that demand is made, stating the basis thereof, within one year from the date rendered.

INITIAL HERE

510a

5 - We shall have the right to give, license, lease or sell to any person, firm or company, matrices, stampers or master recordings from which records reproducing all or any of your services hereunder may be manufactured or sold, and we shall have the right to grant permission to any such person, firm or company to use such matrices, stampers or master recordings to manufacture and sell records therefrom provided only that all such transactions shall be at arms length. In the event that we exercise the above rights in connection with any company, foreign or domestic, your payment hereunder, in lieu of the royalty outlined in paragraph 3 above shall be twenty-five (25%)---------- percent of the net royalties or other payments received by us. Payments to you of royalties or fees as aforesaid earned outside of the United States are to be paid only when such royalties or fees are received in the United States by us, and in the dollar equivalent at the rate of exchange at the time we receive payment. In the event that any payments due from abroad are not convertible into United States dollars or you elect to receive same in foreign currency, we shall pay you upon your request your share or any part thereof as requested by you, in kind, but if you do accept any such foreign currencies towards the payment of your share as above, we shall be released pro tanto for such payment.

INITIAL HERE

6 - During the term of this agreement you will not perform for the purpose of making phonograph records for any person other than us, and during a period of five years after the termination of this agreement you will not perform any musical composition or any other material recorded hereunder for any person other than us for the purpose of making phonograph records. You acknowledge that your services are unique and extraordinary.

7 - All masters recorded hereunder and all matrices and phonograph records manufactured therefrom, together with the performances embodied therein, shall be entirely our property, free of any claims whatsoever by you or any person deriving any rights or interests from you. Without limiting the generality of the foregoing, we and/or our subsidiaries, affiliates and licensees shall have the right to make records or other reproductions of the performances embodied in such recordings by any methods now or hereafter known, and to sell, transfer or otherwise deal in the same under any trademarks, tradenames or labels designated by us.

8 - We shall have the right to use and to allow others to use your name and likeness, and biographical material concerning you, for advertising and purposes of trade, and otherwise without restriction, in connection with the phonograph records made hereunder. We shall not use or authorize any direct endorsement by you of any record or performance or commercial product without your prior written consent.

9 - The word "person" in this contract means and includes any individual, partnership, firm, association or organization, whether or not incorporated or operating for profit. This contract cannot be changed or modified orally. We may at our election assign this agreement or any of our rights hereunder. In the event of such assignment we will remain responsible for the fulfillment of the terms of this contract by the assignee.

10 - In any disputes touching upon this agreement the laws of the State of New York shall govern.

11 - If, for any reason, you fail to perform for us in accordance with the provisions of paragraph 2 of this agreement, or if due wholly or partly to any labor controversy or adjustment thereof, or to any other cause not entirely within our control or which we could not by reasonable diligence have avoided, we are materially hampered in the recording, manufacture, distribution or sale of records, or our normal business operations become commercially impractical, then, without limiting our rights in any such event, we shall have the option without liability to suspend operation of paragraph 2 of this agreement for the duration of any such contingency (as of the start of such contingency) by giving you written notice thereof; and, at our election, a period of time equal to the duration of such suspension shall then be added at the end of the then current period of the term hereof, and then such period and the term of this agreement shall be accordingly extended.

12 - You warrant and represent that no prior contract or agreement of any kind entered into by you, or any prior performance by you, and more particularly your right to record any and all compositions recorded hereunder, will interfere in any manner with complete performance of this agreement by both parties hereto.

13 - All compositions written or composed by you and recorded hereunder shall be licensed to us, at our election, at a royalty rate of one cent (1¢) per record side on the basis of ninety percent (90%) of records manufactured and sold. Arranged or adapted versions of musical compositions in the public domain, when furnished by you for recordings hereunder, shall be free of copyright royalties. Any assignment made by you of the ownership or copyright in any such composition or in any such arranged verison of musical compositions in the public domain shall be made by you subject to the provisions hereof.

14 - For purposes of this agreement, "records", "phonograph records", and "recordings" include all forms of recordings and reproductions manufactured or sold primarily for use as home entertainment including, without limiting the generality of the foregoing, magnetic recording tape and any other medium for reproduction of artistic performances for home entertainment now known or which may hereafter become known and including, if it becomes practical, the use of sight with sound for home use.

15. This contract is governed by AFTRA rules + regulations.

15 - The standard provisions, laws, rules, by-laws and policies of any American Federation of Musicians agreement are incorporated herein by reference and hereby deemed to be part of this agreement and shall be the exclusive provisions of any labor agreement relating to this contract, and any pension or welfare payments made thereunder pursuant to any labor agreement.

A - This contract shall not become effective unless and until it shall be approved by the International Executive Board of the American Federation of Musicians or by a duly authorized agent thereof.

16 - You grant us the right, from time to time, to use one (1) of your performances in a low-price "sampler" record without payment of royaltics.

17 - Whenever and wherever you shall appear in a public performance, such as concert, radio, television, motion pictures or the like, the announcement, advertising and promotional material for such performance shall contain the note that you are a "Vanguard Recording Artist", or "Records Exclusively for Vanguard Records," or some such similar indication, provided that if, by reason of contract difficulties or otherwise, it shall be impossible or impractical for you to secure such notice, your failure to do so shall not be considered a breach of this contract.

18 - The term of this agreement shall be until January 31, ~~1960~~ 1967.
You grant us one (1) further option(s) to extend the term of this agreement for additional periods of one (1) year each upon all the terms and conditions herein contained. Any options to extend the term of this agreement may be exercised by us by giving you notice in writing at least thirty (30) days prior to the expiration of such term. Such notice to you may be given by delivery to you personally or by mailing to you at your last address known to us.

MAIL REC'D 1954

Sincerely,

ACCEPTED AND AGREED TO:

John Hurt
Mississippi John Hurt

Herb Cart - Business Manager

VANGUARD RECORDING SOC., INC.

By

RIDER TO AGREEMENT DATED NOVEMBER 30, 1965 BETWEEN
MISSISSIPPI JOHN HURT AND VANGUARD RECORDING SOC., INC.

1 - You have recorded two LP's for the Piedmont label, titled respectively MISSISSIPPI JOHN HURT and WORRIED BLUES. You ~~warrant that you have recorded no additional material for any person, firm or corporation within the past five (5) years~~. You additionally warrant that you will not release or cause to be released any recordings by you during the term of our agreement, and an additional two (2) year period.

2 - Both you and Piedmont Records represent and agree that we shall have the right to re-record any material previously recorded by you on the above-mentioned LP's.

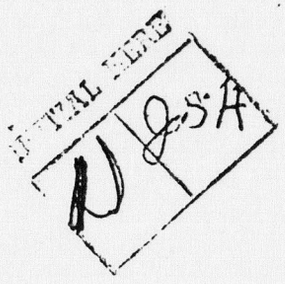


EXHIBIT 63 - STATEMENT OF INCOME AND COSTS

Total Income:

37,273 records sold @ average price of $2.31 = $86,100.63

Foreign licensing and tape income:	$17, 530.32	
20% administration and costs:	- 3,506.06	
25% royalties to artist	= 4,382.58	
AFM Special Payments fund	= 2,629.50	
Net foreign income		7,012.18
Total income =		$93,112.81
Total Costs		87,049.22
Gross Profit before overhead & taxes		$6063.59

*Note: The above figures do not include an allowance for overhead on domestic sales. Normal business practice requires such an allocation of overhead costs for the purposes of determining profit.

1) 20% overhead allocation on gross receipts: $17,220.01

2) 31% overhead allocation on gross receipts: 26,691.00

The 31% figure was arrived at by taking gross income for the four years ending March 31, 1975 and dividing by actual overhead less 50% of officer's salaries.

**Also note that the allocation for advertising and promotion is an estimate, and a careful examination of our files would probably disclose expenditures of a larger magnitude.

BEST COPY AVAILABLE

DIRECT COSTS VSD 79327 "The ~~Immortal~~ Last Sessions of Mississippi John Hurt"

1-12" pressing	$.35 (price range .31 to .41)	
x1 ~~x8~~ 12" jacket	.065 (price range .048 to .075)	
Artist royalty	.23	
AFM Special Payments Fund	.075	
Publisher royalties	.14	
Shipping and warehousing	.04	
Billing and collection	.05	
Waste, defectives, shrinkage	.041	
	$.991	
Sales: to 12/31/1974 8039 X $.991	=	$7,967.49
Production Costs:		
Printing front covers	$503.50	
Separations	425.00	
Liners (notes and type)	200.00	
Photography	250.00	
Design	500.00	
Engineering, programming, mixing, editing. 60 hours @ $90.00	5400.00	
Promotion and advertising	7000.00	
Review Copies	1368.00	
		~~xxxxxxxx~~ $15,646.50

DIRECT COSTS VSD 19/20 "The Best of Mississippi John Hurt"

2 12" pressings	$.70	(price range .62 to.82)
1 2-record jacket	.15	(price range. 13 to .17)
Artist royalty	.23	
AFM Special Payments Fund roy'ty	.075	
Producer royalty (Robert Scherl)	.08	
Publisher royalties	.185	
Shipping and Warehousing	.04	
Billing and collection	.05	
	$1.51	
Waste, defectives, shrinkage	.085	
	$1.595	

Sales: to 12/31/1974 29,234 X $1.595 = $46,628.23

Production Costs:		
Printing front covers	$2366.00	
Separations	564.00	
Liners (notes & type)	300.00	
Photography	250.00	
Design	1000.00	
Engineering, programming, mixing, editing. 40 hours @ $90.00	3600.00	
Promotion and Advertising	7000.00	
Review copies	1727.00	
		$16,807.00

VANGUARD

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 / ALgonquin 5-7732

A00218

JESSIC L & JOHN W HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JAN 1 1975 TO JUN 30 1975

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES		DEBITS CHARGES		BALANCE
VSD 17/18	CANDY MAN	85		.0081		68			
VSD 17/18	CANDY MAN	3		.0040		1			
VSD 17/18	CANDY MAN	90		.0031				7	
VSD-19/20	THE BEST OF JOHN HURT	2		.2684		53			
VSD-19/20	THE BEST OF JOHN HURT	28		.2684	7	51			7
VSD-19/20	THE BEST OF JOHN HURT	1008		.2684	270	54			270
VSD 25/26	MOANIN' THE BLUES	27		.0105		28			
VSD 25/26	MOANIN' THE BLUES	11		.0052		5			
VSD 25/26	MOANIN' THE BLUES	784		.0105	8	23			8
79220	MISS. JOHN HURT TODAY	2		.2684		53			
79220	MISS. JOHN HURT TODAY	27		.2684	7	24			7
79220	MISS. JOHN HURT TODAY	336		.2684	90	18			90
79249	IMMORTAL MISS. JOHN HURT			.2684					
79248	IMMORTAL MISS. JOHN HURT	21		.2684	5	63			5
79248	IMMORTAL MISS. JOHN HURT	246		.2684	66	02			66
VSD 79327	LAST SESSIONS	1		.2684		26			
VSD 79327	LAST SESSIONS	15		.2684	4	02			4
VSD 79327	LAST SESSIONS	230		.2684	61	73			61
06/18/75 1546	ADV AGNST ROYALTIES						2000	00	2000
					523	44	2000	07	1476

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED 1476 63

EXHIBIT 63a - MONTHLY STATEMENTS

516a

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 Algonquin 5-7272

AC0716

JESSIE L & JOHN W HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JULY 1 1974 TO DEC. 31,1974

CATALOG NUMBER OF ITEM	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS	
79220	MISS. JOHN HURT TODAY	1		.23 0		23
79220	MISS. JOHN HURT TODAY	27		.23 0	6	21
79220	MISS. JOHN HURT TODAY	1038		.23 0	238	74
79248	IMMORTAL MISS. JOHN HURT	2		.23 0		46
79248	IMMORTAL MISS. JOHN HURT	21		.23 0	4	83
79248	IMMORTAL MISS. JOHN HURT	549		.23 0	126	27
VSD 79327	LAST SESSIONS	4		.2300		92
VSD 79327	LAST SESSIONS	25		.2300	5	75
VSD 79327	LAST SESSIONS	649		.2300	149	27
VSD 17/18	CANDY MAN	132		.0070		92
VSD 17/18	CANDY MAN	5		.0035		17
VSD 17/18	CANDY MAN	491		.0070	3	43
VSD-19/20	THE BEST OF JOHN HURT			.2300		
VSD-19/20	THE BEST OF JOHN HURT	19		.2300	4	37
VSD-19/20	THE BEST OF JOHN HURT	2006		.2300	461	38
VSD 25/26	MOANIN' THE BLUES	12		.0090		10
VSD 25/26	MOANIN' THE BLUES	23		.0045		10
VSD 25/26	MOANIN' THE BLUES	935		.0090	8	41
					1011	40

ROYALTY STATEMENT

BALANCE IN YOUR FAVOR TO BE CARRIED FORWARD THIS STATEMENT

517a

VANGUARD

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 / Algonquin 5-7732

JESSIE L & JOHN W HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JAN. 1 1974 TO JUNE 30 1974

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS ROYALTIES	DEBITS CHARGES	BALANCE
9220	MISS. JOHN HURT TODAY			.19 0			
9220	MISS. JOHN HURT TODAY			.19 0			
9220	MISS. JOHN HURT TODAY			.19 0			
79220	MISS. JOHN HURT TODAY			.23 0			
79220	MISS. JOHN HURT TODAY	156		.23 0	35 88		35 88
79220	MISS. JOHN HURT TODAY	720		.23 0	165 60		165 60
79248	IMMORTAL MISS. JOHN HURT	2		.23 0	46		46
79248	IMMORTAL MISS. JOHN HURT	151		.23 0	34 73		34 73
79248	IMMORTAL MISS. JOHN HURT	459		.23 0	105 57		105 57
VSD 79327	LAST SESSIONS	5		.2300	1 15		1 15
VSD 79327	LAST SESSIONS	135		.2300	31 05		31 05
VSD 79327	LAST SESSIONS	622		.2300	143 06		143 06
VSD 17/18	CANDY MAN	113		.0070	79		79
VSD 17/18	CANDY MAN	28		.0035	9		9
VSD 17/18	CANDY MAN	714		.0070	4 99		4 99
VSD-19/20	THE BEST OF JOHN HURT	9		.2300	2 07		2 07
VSD-19/20	THE BEST OF JOHN HURT	38		.2300	8 74		8 74
VSD-19/20	THE BEST OF JOHN HURT	2591		.2300	595 93		595 93
VSD 25/26	MOANIN' THE BLUES	475		.0090	4 27		4 27
VSD 25/26	MOANIN' THE BLUES	41		.0045	18		18
VSD 25/26	MOANIN' THE BLUES	1500		.0090	13 50		13 50
					1148 06		1143 [illegible]

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD

CHGS 1143 [illegible]

518a

VANGUARD

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 / Algonquin 5-7732

408218

JESSIE L & JOHN W HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JULY 1 1973 TO DEC. 31,1973

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
79220	MISS. JOHN HURT TODAY	3		.23 0	69		69
79220	MISS. JOHN HURT TODAY	31		.23 0	7 13		7 13
79220	MISS. JOHN HURT TODAY	979		.23 0	225 17		225 17
79248	IMMORTAL MISS. JOHN HURT	28C		.23 0		6 44	6 44C
79248	IMMORTAL MISS. JOHN HURT	45		.23 0	10 35		10 35
79248	IMMORTAL MISS. JOHN HURT	609		.23 0	140 07		140 07
VSD 79327	LAST SESSIONS	20C		.2300		4 60	4 60C
VSD 79327	LAST SESSIONS	55		.2300	12 65		12 55
VSD 79327	LAST SESSIONS	844		.2300	194 12		194 12
VSD 17/18	CANDY MAN	570		.0070	3 99		3 99
VSD 17/18	CANDY MAN	15		.0035	5		5
VSD 17/18	CANDY MAN	639		.0070	4 47		4 47
VSD-19/20	THE BEST OF JOHN HURT	457		.2300	105 11		105 11
VSD-19/20	THE BEST OF JOHN HURT	107		.2300	24 61		24 61
VSD-19/20	THE BEST OF JOHN HURT	2899		.2300	666 77		666 77
VSD 25/26	MOANIN' THE BLUES	32		.0090	28		28
VSD 25/26	MOANIN' THE BLUES	15		.0045	6		6
VSD 25/26	MOANIN' THE BLUES	1642		.0090	14 77		14 77
					1410 29	11 04	1399 25

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT

CHECK ENCLOSED 1399 25

519a

VANGUARD

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 / Algonquin 5-7732

JESSIE L & JOHN W HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JAN. 1,1973 TO JUNE 30,1973

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
79220	MISS. JOHN HURT TODAY	5		.23 0	1 15		1 15
79220	MISS. JOHN HURT TODAY	69		.23 0	15 87		15 87
79220	MISS. JOHN HURT TODAY	831		.23 0	191 13		191 13
79248	IMMORTAL MISS. JOHN HURT	69		.23 0	15 87		15 87
79248	IMMORTAL MISS. JOHN HURT	61		.23 0	14 03		14 03
79248	IMMORTAL MISS. JOHN HURT	499		.23 0	114 77		114 77
VSD 79327	LAST SESSIONS	78		.2300	17 94		17 94
VSD 79327	LAST SESSIONS	89		.2300	20 47		20 47
VSD 79327	LAST SESSIONS	1323		.2300	304 29		304 29
VSD 17/18	CANDY MAN	99		.0070	69		69
VSD 17/18	CANDY MAN	9		.0035	3		3
VSD 17/18	CANDY MAN	3180		.0070		2 22	2 22C
VSD-19/20	THE BEST OF JOHN HURT	13		.2300	2 99		2 99
VSD-19/20	THE BEST OF JOHN HURT	9		.2300	2 07		2 07
VSD-19/20	THE BEST OF JOHN HURT	3067		.2300	705 41		705 41
VSD 25/26	MOANIN' THE BLUES	20		.0090	18		18
VSD 25/26	MOANIN' THE BLUES	8		.0045	3		3
VSD 25/26	MOANIN' THE BLUES	1448		.0090	13 03		13 03
					1419 95	2 22	1417 73

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT

CHECK ENCLOSED 1417 73

520a

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 Algonquin 5-7732

208218

JESSIE L & JOHN W HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JULY 1 1972 TO DEC. 31,1972

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
9220	MISS. JOHN HURT TODAY	-		.19 0			
9220	MISS. JOHN HURT TODAY			.19 0			
9220	MISS. JOHN HURT TODAY			.19 0			
79220 14	MISS. JOHN HURT TODAY	12		.23 0	2 76		2 76
79220 41	MISS. JOHN HURT TODAY	36		.23 0	8 28		8 28
79220 1451	MISS. JOHN HURT TODAY	1174		.23 0	270 02		270 02
79248 17	IMMORTAL MISS. JOHN HURT	15		.23 0	3 45		3 45
79248 42	IMMORTAL MISS. JOHN HURT	37		.23 0	8 51		8 51
79248 1073	IMMORTAL MISS. JOHN HURT	868		.23 0	199 64		199 64
5 VSD 79327	LAST SESSIONS	4		.2300	92		92
30 VSD 79327	LAST SESSIONS	27		.2300	6 21		6 21
5185 VSD 79327	LAST SESSIONS	4199		.2300	965 77		965 77
139 VSD 17/18 *	CANDY MAN	125		.0070	87		87
1242 VSD 17/18 *	CANDY MAN	1137		.0035	3 97		3 97
13555 VSD 17/18 *	CANDY MAN	10979		.0070	76 85		76 85
VSD-19/20 17	THE BEST OF JOHN HURT	15		.2300	3 45		3 45
VSD-19/20 27	THE BEST OF JOHN HURT	24		.2300	5 52		5 52
VSD-19/20 4159	THE BEST OF JOHN HURT	3717		.2300	854 91		854 91
86 VSD 25/26 *	MOANIN' THE BLUES	77		.0090	69		69
65 VSD 25/26 *	MOANIN' THE BLUES	58		.0045	26		26
13510 VSD 25/26 *	MOANIN' THE BLUES	10943		.0090	98 48		98 48
					2510 56		2510 56

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT

CHECK ENCLOSED 2510 56

521a

RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 / Algonquin 5-7732

AD8218

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JAN. 1,1972 TO JUNE 30,1972

PAGE 1

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
VSD-19/20 12	THE BEST OF JOHN HURT	10		.2300	2 30		2 30
VSD-19/20 99	THE BEST OF JOHN HURT	89		.2300	20 47		20 47
VSD-19/20 3541	THE BEST OF JOHN HURT	2867		.2300	659 41		659 41
79220 19	MISS. JOHN HURT TODAY	17		.23 0	3 91		3 91
79220 54	MISS. JOHN HURT TODAY	30		.23 0	6 90		6 90
79220 1457	MISS. JOHN HURT TODAY	1339		.23 0	307 97		307 97
79248 11	IMMORTAL MISS. JOHN HURT	9		.23 0	2 07		2 07
79248 48	IMMORTAL MISS. JOHN HURT	43		.23 0	9 89		9 89
79248 1116	IMMORTAL MISS. JOHN HURT	903		.23 0	207 69		207 69

VANGUARD RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 Algonquin 5-7732

408218

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JULY 1,1971 TO DEC. 31,1971

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD					681 10	651 10
VSD-19/20 1113	THE BEST OF JOHN HURT	110		.2300	25 30		25 30
VSD-19/20 53	THE BEST OF JOHN HURT	47		.2300	10 81		10 31
VSD-19/20 3781	THE BEST OF JOHN HURT	3061		.2300	704 03		704 03
79220 973	MISS. JOHN HURT TODAY	245		.23 0	56 35		56 35
79220 12	MISS. JOHN HURT TODAY	10		.23 0	2 30		2 30
79220 1358	MISS. JOHN HURT TODAY	1099		.23 0	252 77		252 77
79248 1652	IMMORTAL MISS. JOHN HURT	165		.23 0	37 95		37 95
79248 12	IMMORTAL MISS. JOHN HURT	10		.23 0	2 30		2 30
79248 962	IMMORTAL MISS. JOHN HURT	778		.23 0	178 94		178 94
					1270 75	681 10	589 65

3-12-72
Ck #12433

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT

CHECK ENCLOSED 589 65

523a

VANGUARD

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 Algonquin 5-7732

A38218

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JAN 1 1971 TO JUNE 30 1971

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD					3105 53	3105
79220	MISS. JOHN HURT TODAY	13		.23 0	2 99		2
79220	MISS. JOHN HURT TODAY	18		.23 0	4 14		4
79220	MISS. JOHN HURT TODAY	1467		.23 0	337 41		337
79248	IMMORTAL MISS. JOHN HURT	15		.23 0	3 45		3
79248	IMMORTAL MISS. JOHN HURT	22		.23 0	5 05		5
79248	IMMORTAL MISS. JOHN HURT	927		.23 0	213 21		213
VSD-19/20	THE BEST OF JOHN HURT	56		.2300	12 88		12
VSD-19/20	THE BEST OF JOHN HURT	56		.2300	12 88		12
VSD-19/20	THE BEST OF JOHN HURT	7967		.2300	1832 41		1832
					2424 43	3105 53	EST

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT	681 10	CHECK ENCLOSED

524a

RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 / Algonquin 5-7732

208218

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JULY TO DEC. 1970

PAGE 1

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
79220	MISS. JOHN HURT TODAY	24		.23 0	5 52		5 52
79220	MISS. JOHN HURT TODAY	63		.23 0	14 49		14 49
79220	MISS. JOHN HURT TODAY	2195		.23 0	504 85		504 85
79248	IMMORTAL MISS. JOHN HURT	16		.23 0	3 68		3 68
79248	IMMORTAL MISS. JOHN HURT	7		.23 0	1 61		1 61
79248	IMMORTAL MISS. JOHN HURT	1584		.23 0	364 32		364 32
3/4/71	ADVANCE					4000 00	4000 00
					894 47	4000 00	3105 53

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT 3105 53

CHECK ENCLOSED

525a

RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 Algonquin 5-7732

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JAN 1 1970 TO JUNE 30 1970

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
79220	MISS. JOHN HURT TODAY	19		.23	4 37		4 37
79220	MISS. JOHN HURT TODAY	17		.23	3 91		3 91
79220	MISS. JOHN HURT TODAY	1,467		.23	337 41		337 41
79248	IMMORTAL MISS. JOHN HURT	15		.23	3 45		3 45
79248	IMMORTAL MISS. JOHN HURT	9		.23	2 07		2 07
79248	IMMORTAL MISS. JOHN HURT	1,093		.23	251 39		251 39
						6-21-70 # 3707	
	ROYALTY STATEMENT				602 60		602 60

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT	CHECK ENCLOSED 602.60

526a

RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 / Algonquin 5-7732

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S. HURT
C/O GEORGE E GOLDSTEIN
GOLDSTEIN & GOLDSTEIN
327 S 17TH ST-PHILA PA

JUL 1 1969 - DEC 31 1969

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD					161 55	161
9220	MISS. JOHN HURT TODAY			.19			
9220	MISS. JOHN HURT TODAY	540		.19		10 26	10
9220	MISS. JOHN HURT TODAY	C		.19			
79220	MISS. JOHN HURT TODAY	16		.23	3 68		3
79220	MISS. JOHN HURT TODAY	20		.23	4 60		4
79220	MISS. JOHN HURT TODAY	2,233		.23	513 59		513
79248	IMMORTAL MISS. JOHN HURT	14		.23	3 22		3
79248	IMMORTAL MISS. JOHN HURT	10		.23	2 30		2
79248	IMMORTAL MISS. JOHN HURT	1,445		.23	332 35		332
	3/13/70 PAID			68.79			
	Less A/R			25.-			
				66.29			
	ROYALTY STATEMENT				859 74	171 81	687

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT

CHECK ENCLOSED

527a

537

George E. Goldstein
Goldstein - Goldstein JESSIE LEE HURT
27 South Seventeenth St. ~~ADM. OF EST. OF~~ JOHN S HURT
Philadelphia, Penn. 19103 ~~C/O MR JOHN T KELTON~~
~~P O BOX 666~~
~~CANADA 155 37701~~

VANGUARD RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 / ALgonquin 5-7732

JAN 1 1969 TO JUNE 30 1969

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALITIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD					746 39	746 39
9220	MISS. JOHN HURT TODAY			.19			
9220	MISS. JOHN HURT TODAY			.19			
9220	MISS. JOHN HURT TODAY	16C	C	.19		3 04	3 04
79220	MISS. JOHN HURT TODAY	22		.23	5 06		5 06
79220	MISS. JOHN HURT TODAY	15		.23	3 45		3 45
79220	MISS. JOHN HURT TODAY	1,853		.23	426 19		426 19
79248	IMMORTAL MISS. JOHN HURT	17		.23	3 91		3 91
79248	IMMORTAL MISS. JOHN HURT	22		.23	5 06		5 06
79248	IMMORTAL MISS. JOHN HURT	1,237		.23	284 51		284 51
	ADJUSTMENT FOR REDUCTION $5.79 TO $4.79 EQUIVALENT DURING ROYALTY PERIOD	C	C			140 30	140 30C
					728 14	889 73	161 59C

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT 161.59

CHECK ENCLOSED

528a

RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 Algonquin 5-7732

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S HURT
C/O MR JOHN T KEETON
P O BOX 666
GRENADA MISS 38901

JUL 1 1968 - DEC 31 1968

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT		RATE	CREDITS (ROYALTIES)		DEBITS (CHARGES)		BALANCE	
	BALANCE FORWARD	-						1491	44	1491	44C
9220	MISS. JOHN HURT TODAY				.19						
9220	MISS. JOHN HURT TODAY	3			.19		57				57
9220	MISS. JOHN HURT TODAY	97C		C	.19			18	43	18	43C
79220	MISS. JOHN HURT TODAY	40			.23	9	20			9	20
79220	MISS. JOHN HURT TODAY	6			.23	1	38			1	38
79220	MISS. JOHN HURT TODAY	1,964			.23	451	72			451	72
79248	IMMORTAL MISS. JOHN HURT	59			.23	13	57			13	57
79248	IMMORTAL MISS. JOHN HURT	37			.23	8	51			8	51
79248	IMMORTAL MISS. JOHN HURT	1,211			.23	278	53			278	53
						763	48	1509	87	746	39C

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT 746.39

CHECK ENCLOSED

529a

VANGUARD RECORDING SOCIETY INC.
71 West 23rd Street, New York 10010 / Algonquin 5-7732

JESSIE LEE HURT
ADM. OF EST. OF
JOHN S HURT
C/O MR JOHN T KEETON
P O BOX 666
GRENADA MISS 38901

JAN 1 1968 - JUN 30 1968

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT		RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD						2613 76	2613 76C
9220	MISS. JOHN HURT TODAY	24			.19	4 56		4 56
9220	MISS. JOHN HURT TODAY	40C		C	.19		7 60	7 60C
9220	MISS. JOHN HURT TODAY	18			.19	3 42		3 42
79220	MISS. JOHN HURT TODAY	64			.23	14 72		14 72
79220	MISS. JOHN HURT TODAY	1,555			.23	357 65		357 65
79220	MISS. JOHN HURT TODAY	51			.23	11 73		11 73
79248	IMMORTAL MISS. JOHN HURT	115			.23	26 45		26 45
79248	IMMORTAL MISS. JOHN HURT	84			.23	19 32		19 32
79248	IMMORTAL MISS. JOHN HURT	3,009			.23	692 07		692 07
						1129 92	2621 36	1491 44C

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT 1491.44

CHECK ENCLOSED 530

RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 / Algonquin 5-7732

JOHN HURT
C/O JOHN T KEETON
P O BOX 666
GRENADA MISS 38901

JUL 1 1967 - DEC 31 1967

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALITIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD	C	C			2993 49	2993 49
9220	MISS. JOHN HURT TODAY	30		.19	✓5 70		5 70
9220	MISS. JOHN HURT TODAY	581		.19	✓110 39		110 39
9220	MISS. JOHN HURT TODAY	56		.19	✓10 64		10 64
79220	MISS. JOHN HURT TODAY	45		.23	✓10 35		10 35
79220	MISS. JOHN HURT TODAY	1,030		.23	✓236 90		236 90
79220	MISS. JOHN HURT TODAY	25		.23	5 75		5 75
					379 73	2993 49	2613 76

ROYALTY STATEMENT

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT	2613.76
CHECK ENCLOSED	531a

RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 / Algonquin 5-7732

MISSISSIPPI JOHN HURT
c/o JOHN T. KEETON
P.O. Box 666
GRENADA, MISS 38901

AUG 15 1967

JAN. 1 - JUNE 30 1967

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD						2,002 19
9220	MISS. JOHN HURT TODAY	1,693		.19	321 67		
/9220	MISS. JOHN HURT TODAY	659		.23	151 57		
6/19/67	ADVANCE					1,464 54	
	ROYALTY STATEMENT				473 24	1,464 54	2,993 49

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT $2993.49

CHECK ENCLOSED

532a

VANGUARD

RECORDING SOCIETY INC.
71 West 23rd Street, New York, N. Y. 10010 / Algonquin 5-7732

FEB 13 1967

JOHN HURT
1 NO LEVEE ST
GRENADA- MISS

JUL. 31- DEC. 31 1966

CATALOG NUMBER OR DATE	DESCRIPTION	SALES OR RETURNS	TOTAL SALES AMOUNT	RATE	CREDITS (ROYALTIES)	DEBITS (CHARGES)	BALANCE
	BALANCE FORWARD						2,778 36
9220	*MISSISSIPPI JOHN HURT TOD	2,693		.19	511 67		
19220	MISSISSIPPI JOHN HURT TOD	1,150		.23	264 50		
		3,843			776 17		776 17
	ROYALTY STATEMENT				776 17		2,002 19

BALANCE IN OUR FAVOR TO BE CARRIED FORWARD ON NEXT STATEMENT 2,002 19

CHECK ENCLOSED

533a

PLAINTIFF

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

86 ed

EXHIBIT 86 - LETTER DATED APRIL 27, 1971 FROM VANGUARD TO SANFORD ROSS

April 27, 1971

Mr. Sanford Ross
315 West 57th Street
New York, New York

Dear Sandy:

Enclosed are some relevant documents from our Mississippi John Hurt file. I have spoken to Hurt's attorney (he still represents Mrs. Hurt) and he is willing to take any and all steps to break the contract with Music Research Inc. Please note the letter of authorization from Hurt to you in 1966.

Best,

Sincerely yours,

VANGUARD RECORDING SOC., INC.

MS/RM
enc:

Maynard Solomon

DEVALUATION MEMORANDUM

The following figures were used in the determination of the actual dollar devaluation of the MRI vault tapes based upon materials pre-empted by the release of Vanguard's 3rd and 4th LPs (THE BEST OF MISSISSIPPI JOHN HURT, VSD 19/20 and MISSISSIPPI JOHN HURT LAST SESSIONS, VSD 9327.)

The materials available to MRI would have been sufficient to release a total of five LP discs (approximately 200 minutes of material, including approximately 130 minutes of music and 70 minutes of stories and interview material) to be packaged as three separate packages of two 2-disc and one single-disc package.

With the musical material now preempted by Vanguard, all of the vault material is now substantially devaluated. The devaluation total is $250,050.00, broken down as follows:

MISSISSIPPI JOHN HURT MEMORIAL ANTHOLOGY, VOL. I			2-disc set
$9.95 list price - wholesale $4.20 to distributors			
Projected sales (lifetime catalog) - 35,000 copies			
35,000 x $4.20 - gross income			147,000.00
Production costs,			
Color seps	550.00		
Layout & Design	300.00		
Photos	300.00	1,150.00	
Mastering Tape Costs 4 reels	40.00		
Disc Mastering 35@ side x 4	140.00		
Metal Parts 3-step 35@ side	140.00		
Disc Mastering Studio Time 4 hrs @$50 per	200.00	520.00	
Printing at $70 per M x 35,000	2,450.00	2,450.00	
Jacket Fabrication (double pocket fold @12.00 per c	4,200.00	4,200.00	
Pressings (.32 @ 2 x 35,000)	22,400.00	22,400.00	
Labels 15 per m x 35,000 - 525 x 2 discs	1,050.00	1,050.00	
Royalties @.25 x 2 discs - .50 x 35,000	17,500.00		
Mechanical License Fees @.25 x 2 discs - .50 x 35,000	17,500.00	35,000.00	
Promotion: approx. 1,000 LPs & shipping - 1,000 x 1.50	1,500.00		
Advertising (approximately)	1,000.00	2,500.00	
GROSS EXPENSES TOTAL		69,270.00	-69.270.00
NET PROFITS:			77,730.00

MISSISSIPPI JOHN HURT MEMORIAL ANTHOLOGY, VOL. II — 2-disc set
$9.95 list price - wholesale $4.20 to distributors
Projected sales (lifetime catalog) - 35,000 copies

35,000 x $4.20 - gross income			147,000.00
Production costs			
Color seps	550.00		
Layout & Design	300.00		
Photos	300.00	1,150.00	
Mastering Tape Costs 4 reels	40.00		
Disc Mastering 35@ side x 4	140.00		
Metal Parts 3-step 35A side	140.00		
Disc Mastering Studio Time 4 hrs @$50 per	200.00	520.00	
Printing at $70 per M x 35,000	2,450.00	2,450.00	
Jacket Fabrication (double pocket fold @12.00 per c)	4,200,00	4,200.00	
Pressings (.32 @ 2 x 35,000)	22,400.00	22,400.00	
Labels 15 per m x 35,000 - 525 x 2 discs	1,050.00	1,050.00	
Royalties @.25 x 2 discs - .50 x 35,000	17,500.00		
Mechanical License Fees @.25 x 2 discs - .50 x 35,000	17,500.00	35,000.00	
Promotiona approx. 1,000 LPs & shipping - 1,000 x 1.50	1,500.00		
Advertising (approximately)	1,000.00	2,500.00	
GROSS EXPRESES TOTAL		69,270.00	-69.270.00
		NET PROFITS:	77,730.00

##########

MISSISSIPPI JOHN HURT MEMORIAL ANTHOLOGY, LAST ACT — 1 disc
$6.95 list price - wholesale $2.50 to distributors
Projected sales (lifetime catalog) - 35,000 copies

35,000 x 2.50 - gross income			87,500.00
Production costs			
color seps	275.00		
Layout & design	150.00		
photos	200.00	625.00	
Mastering Tape Costs 2 reels	20.00		
Disc Mastering @35 per side	70.00		
Disc Mastering studio time 2 hrs	100.00		
Metal Parts 3-step @35 per side	70.00	260.00	

CONTINUED.....

Printing at 35 per M x 35,000	1,225.00	1,225.00	
Jacket fabrication @6 per c x 35,000	2,100.00	2,100.00	
Pressings @.32 x 35,000	11,200.00	11,200.00	
Labels 15 per M x 35,000	525.00	525.00	
Royalties @.25 x 35,000	8,750.00		
Mechanical License fees @.25	8,750.00	17,500.00	
Promotiona approx. 1,000 LPs and shipping	1,000.00		
Advertising (approximately)	1,000.00	2,000.00	
GROSS EXPENSES TOTAL		35,435.00	-35,435.00
		NET PROFITS:	52,065.00

##########

Overseas Licensing and Distribution

Approximate total overseas sales equal to total U.S. sales

Vol. I	35,000 x .90 (10% of 90% of 9.95 list)	31,500.00
Vol. II	35,000 x .90 "	31,500.00
Vol. III	35,000 x .63 (10% of 90% of 6.95 list)	22,050.00

Gross Overseas Income - $85,050.00 x ½ (50% to artist) - Net Overseas Income $42,525.00

##########

Total Devaluation of Vault Tapes:

$77,730.00
77,730.00
52,065.00
42,525.00
$250,050.00

ADDENDUM TO DEVALUATION MEMORANDUM

RE: Operating Overhead Small Label (e.g., Adelphi)

Combined Operating Expenses for 1974 (sample year): $19,983.00

Approximate Division of operations:

50% Distribution: 9,991.50
50% Manufacturing 9,991.50

Manufactured approximately 8 LPs per year; operating expenses attributable per LP: $\frac{9991.50}{8} =$ $1,248.94

Therefore, combined MRI vault devaluation including operating overhead for 3 LPS:
3 x 1,248.94 - $3,746.82

Net Devaluation	$250,050.00
minus operating overhead	- 3,746.82
	$246,303.18

~~50816.06~~

50816.06 = 1.45 net profit per single disc incl. operating overhead

2.18 net profit per double LP

gross sales 5 single LP's = ₦437,500.00

net profit 5 single LP's = ₦254,080.30

EXHIBIT 92 - MUSIC RESEARCH VAULT MATERIAL

#III = 10
540a
#IV = 12

MUSIC RESEARCH VAULT MATERIAL

1. Monday Morning Blues
2. Avalon Blues
3. Joe Turner
4. Hop Joint
5. Good Morning Miss Carrie
6. Richland Women Blues
7. Nobody's Dirty Business
8. Frankie (and Albert)
9. Spanish Fandang
10. Talking Casey Jones
11. Pera-Lee
12. If You Don't Want Me
13. Pay Day
14. Got The Blues, Can't Be Satisfied
15. Louis Collins
16. Trouble I've Had It All My Days
17. Stackolee
18. See See Rider
19. Spike Driver (John Henry)
20. Pallet On The Floor
21. Rubber Dolly
22. Salty Dog
23. My Creole Belle
24. Let The Mermaids Flirt With Me
25. Candy Man
26. Coffee Blues
27. Hey Baby Right Away
28. Slidin Delta
29. Stock Time (STOP TIME)
30. Lazy Blues
31. Beulah Land
32. Oh Mary Don't You Weep (Religious)
33. Glory Glory Hallelujah
34. Keep On Knocking
35. What a Friend We Have in Jesus (Religious)
36. Waiting For You
37. Over In Glory Land (Religious)
38. Walking The Floor Over You
39. Camp Meeting Tonight on the Old Camp Ground (Tenting Tonight) (Religious)
40. Blessed Be the Name of The Lord (Religious)

TITLES ON #III WHICH DUPLICATE TITLES ON #'S I + II WERE NOT LISTED, THUS CANNOT BE CHECKED OFF, W/OUT REF. TO LP JACKET (#III)

41 When The Roll is Called Up Yonder (Religious)
42 Royal Telephone (Religious)
43 Blind Man Sit in the Way and Cried (Religious)
44 Where Shall I Be (Religious)
45 Weeping and Wailing (Religious)
IV 46 Farther Along (Religious)
47 Do Lord Remember Me (Religious)
48 Were You There When They Crucified My Lord (Religious)
49 Glory To His Name (Religious)
50 I'll Fly Away (Religious)
51 The Ten Virgins (When the Bridegroom Comes) TENDER VIRGINS
IV 52 Nobody Cares For Me
53 Corrina Corrina
IV 54 Funky Butt
55 Cow Hooking Blues
56 I'm Satisfied
57 Ain't Nobody But You Babe
IV 58 The First Shot Missed Him
IV 59 Shortnin Bread
60 Redwing
61 Fall That Sack
62 Four O'Clock Blues
63 I Got Mine
64 Bill Bailey
65 Jim Canaan
66 Alabama Bound
67 Looking This Way . Religious?
68 God's Unchanging Hand (Religious)
IV 69 Poor Boy A Long Ways From Home
70 Waiting For a Train
71 Liza Jane
72 Chicken Song
III 73 You Are My Sunshine
74 Will the Circle Be Unbroken (Religious)
75 I Ain't Gonna Study War No More (fragment) (not issuable) (Religious)
IV 76 You Got to Get Ready (religious) (YOU GOT TO DIE)
77 Precious Lord Take My Hand (Religious)
78 Woke Up This Morning Blues
79 Long Lonesome Blues
80 Rock of Ages (not issuable) (religious)
81 Take This Hammer

542a

	82	Lonesome Valley (religious)
	83	The Saints (Religious)
III	84	I Shall Not Be Moved (Religious)
	85	Hot Time
	86	Lonesome Is I Religious??
	87	Nearer My God to Thee (Religious)
	88	Tell Me Baby
	89	Boogie
	90	When I Lay My Burden Down (religious)
	91	Guitar Boogie/Wopried Blues

23 Titles Religious
68 Titles Orig Trad.
91 Titles Total

First Vanguard Album (MISSISSIPPI JOHN HURT TODAY --VSD-79220)

1 Pay Day
2 I'm Satisfied
3 Candy Man
4 Make Me a Pallet On The Floor
5 Talking Casey
6 Corrinna, Corrinna
7 Coffee Blues
8 Louis Collins
9 Hot Time in the Old Town Tonight
10 If You Don't Want Me Baby
11 Spike Driver's Blues
12 Beulah Land

Second Vanguard Album (THE IMMORTAL MJH -- VSD-79248)

12 Since I've Laid My Burden Down
13 Moaning the Blues
14 Buck Dance
15 Lazy Blues
16 Richland Women Blues
17 Tender Virgins
18 Hop Joint
19 Monday Morning Blues
20 I've Got the Blues, Can't Be Satisfied
21 Keep On Knocking
22 Chicken
23 Stagolee
24 Nearer My God To Thee

Third Vanguard Album (THE BEST OF MJH -- VSD 19/20)

25 Here Am I, Oh Lord Send Me
✓26 I Shall Not Be Moved
27 Baby What's Wrong With You
✓28 It Ain't Nobody's Business
✓29 Salty Dog Blues
✓30 Avalon, My Home Town
✓31 Sliding Delta
✓32 My Creole Belle
✓33 C.C. Rider
✓34 Spanish Fandango
✓35 Talking Casey
✓36 You Are My Sunshine

Fourth Vanguard Album (MJH "LAST SESSIONS" -- VSD-79327)

37	Poor Boy, Long Ways From Home
38	Boys, You're Welcome
39	Joe Turner blues
40	First Shot Missed Him
41	Farther Along
42	Funky Butt
43	Spider, Spider
44	Waiting For You
45	Shortnin' Bread
46	Trouble, I've Had it All My Days
47	Let the Mermaids Flirt With Me
48	Good Morning Carrie
49	Nobody Cares For Me
50	All Night Long
51	Hey, Honey, Right Away
52	You've Got To Die
53	Goodnight Irene

FIRST PIEDMONT ALBUM PLP 13157

Avalon Blues
Richland Women Blues
Spike Driver Blues
Salty Dog Salty Dog
Cow Hooking Blues
Spanish Bandang
Casey Jones
Louis Collins
Candy Man Blues
My Creole Belle
Liza Jane-God's Unchanging Hand
Joe Turner Blues

SECOND PIEDMONT ALBUM PLP 13161

Lazy Blues
Farther Along
Sliding Delta
Nobody Cares for Me
Cow Hooking Blues #2
Talking Casey
Weeping and Wailing
Worried Blues
Oh Mary Dont You Weep
I Been Crying Since You Been Gone

EXHIBIT 68 - LETTER DATED MARCH 30, 1971 FROM MESSERS. POWELL, HORKAN & POWELL TO MANNIE SOLOMON

LAW OFFICES

POWELL, HORKAN & POWELL

SUITE 1200

815 CONNECTICUT AVENUE, N. W.

WASHINGTON, D. C. 20006

AREA CODE 202-296-6770-CABLE POCAHONTAS

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
WILLIAM J. POWELL

VIRGINIA OFFICES:
UPPERVILLE, VIRGINIA
TELEPHONE 592-3262
GLOUCESTER, VIRGINIA
TELEPHONE 693-3939
ARLINGTON, VIRGINIA
TELEPHONE 525-3474

March 30, 1971

cc to Lowdey Lon

Mr. Mannie Soloman
Vanguard Recording Society and Sales, Inc.
71 West 23rd Street
New York, New York 10011

RE: Music Research, Inc.; Adelphi Records, Inc., Recordings of Music of John Hurt

Dear Mr. Soloman:

This letter will follow up our telephone conversation of several days ago regarding your company's unauthorized production and sale of a double record fold out album, VSD 19-20, "The Best of Mississippi John Hurt."

I have been retained to represent both Music Research, Inc., who holds the exclusive contractual rights to produce recordings of the music of John Hurt, as well as Adelphi Records, Inc., who entered into a contract with Music Research, Inc., dated June 8, 1970, to produce a double record fold out album of the music of John Hurt entitled "John Hurt Memorial Anthology."

My clients insist that you immediately cease producing and placing on the market any recordings of the music of John Hurt, that you recall all albums shipped to distributors, that you render to Music Research, Inc., an accounting for all albums already sold, and that you pay over to Music Research, Inc., all profits which your company has earned from these sales.

I am enclosing herewith the Management Agreement, dated March 15, 1963, by and between Music Research, Inc., and John S. Hurt, which, as you will see, is a valid and binding contract. Paragraph fifteen of this contract provides for an initial term of five years from March 15, 1963, and an automatic renewal provision for a second five-year term, provided "Artist shall have earned a gross aggregate sum in excess of Five Hundred Dollars, ($500.00) during the said contract period." Since the 1964 form W-2 given

Mr. Mannie Soloman
March 30, 1971

to John Hurt in that year, shows that $4,410.00 was paid to John Hurt by the company during 1964, the aforesaid contract was automatically renewed by its terms and does not expire until March 1st 1973.

Even if John Hurt signed some other contract subsequent to his execution of the enclosed contract, it would be invalid, as I am sure your lawyers will advise you. I would appreciate your sending me a photostatic copy of any such contract, if such exists.

Please respond immediately to this letter, and let me know what your intentions are, for if I do not hear from you within a reasonable time, I will be forced to file a suit against your company for damages, an accounting, and injunctive relief.

Very truly yours,

William J. Powell

William J. Powell

Copies to: Mr. Thomas B. Hoskins, President
Music Research, Inc.

Mr. Eugene R. Rosenthal, President
Adelphi Records, Inc.

BT

548a

EXHIBIT 94 - LETTER FROM RICHARD K. SPOTTSWOOD TO MAYNARD SOLOMON

PLAINTIFF EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
94

June 21, 1963

Maynard Solomon
Vanguard Recording Society, Inc.
154 W. 14 Street
New York 11, New York

Dear Mr. Solomon:

Concerning your letter of June 11 to Mississippi John Hurt about Newport Festival recordings, we have discussed the matter with Mr. Hurt.

He will be happy to be included in any recordings made at the festival as will Music Research, his manager.

However, he will require $50 as an advance on any selection to be released and royalties of $0.02 per selection per copy sold.

Music Research will automatically extend recording privileges to record, since any contract Mr. Hurt signs is approved by us. We will be happy to cooperate in any way possible with regards to pictures, background information &c.

Mr. Hurt is not yet a member of AFM.

Sincerely,

Richard K. Spottswood, Pres.
Music Research, Incorporated

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC.,

Plaintiffs,

-against-

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff,

-against-

HERB GART, d/b/a HERB GART MANAGEMENT, INC.,

Third-PartyDefendant.

73 Civ. 394 (CLB)

REQUEST TO ADMIT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiffs request defendant Vanguard Recording Society, Inc. ("Vanguard") to admit the following:

1. That a certain letter dated April 20, 1966 from Dick Waterman to Mr. Maynard Solomon, a copy of which is annexed hereto as Exhibit 1, was received by Mr. Maynard Solomon in the ordinary course of the mails.

2. That a certain undated letter from Dick Waterman to Maynard, a copy of which is annexed hereto as Exhibit 2, was received by Maynard Solomon on the same day as his receipt of Exhibit 1, or within one week after his receipt of Exhibit 1.

3. That "the contract (?)" referred to in paragraph 2 of Exhibit 1 is the Management Agreement dated March 15, 1963 by and between Mississippi John Hurt and Music Research, Inc.

4. That "the contract" referred to in the undated Exhibit

2 is the Management Agreement dated March 15, 1963 by and between Mississippi John Hurt and Music Research, Inc.

5. That the aforesaid Management Agreement was enclosed with Exhibit 2 and received by Maynard Solomon at the same time as his receipt of Exhibit 2.

BAKER & McKENZIE
Attorneys for Plaintiff
375 Park Avenue
New York, New York 10022

TO: HARRY H. LIPSIG
100 Church Street
New York, New York 10007
Attention: Joseph Napoli, Esq.
Attorney for Defendant

KURTZ & VASSALLO
598 Madison Avenue
New York, New York 10022
Attorney for Third-Party Defendant

EXHIBIT 1 - LETTER DATED APRIL 20, 1966 FROM DICK WATERMAN
TO MAYNARD SOLOMON ANNEXED TO FOREGOING REQUEST

Vanguard Productions

4 PARKER STREET, (617) 876-9837

Cambridge, Mass.,

April 20, 1966

Mr. Maynard Solomon
Vanguard Recording Society
154 West 14th Street
New York City, New York

Dear Maynard,

I just came back from Ohio where Son House and John Hurt were in dual concerts last weekend. Traveling with John was quite an experience after a year and a half on the road with Son. John eats anything, sleeps anytime, is always affable and his music is consistently good.

You asked if I wanted you to break the contract (?) that exists between John and Music Research, Inc.? Well, I'm enclosing a copy of it so you can look it over and make your own decision on that. Paragraph Nine gives them 50% of all gross money that John makes and Paragraph Ten says that John pays any and all expenses that the Manager may incur. Paragraph Twelve also says that John will pay additionally half of the booking percentage. Paragraph Fourteen says that the Manager holds the copyright to any and all John Hurt material and it becomes "the absolute property of Manager forever." Paragraph Fifteen says that the agreement is for five years with an automatic five year renewal.

We both know that this rag isn't worth the paper that it is written on. However, it must be broken fully and completely in order for John to own his own songs. He has never received any money either from his Piedmont sales or from Newport albums. He's been completely in the dark as to where he has played and for how much ever since he started playing again in 1963.

This business is not one where there are "good guys" and "bad guys," but I feel that I can do the best job for John. He likes me and has asked me to travel with him. I guess that the objective one to speak to is Pat Sky, since he knows all the persons involved and has remained detatched and a good friend to John through it all. John told Pat that he wanted me to travel with him but he was afraid of Tom and didn't want to hurt his feelings by telling him he didn't want him around any more.

EXHIBIT 1

I really love this man, Maynard, and I have stood by and watched him robbed for over two years. I have just gotten tired of Herb Gart telling him to stay in Mississippi until he sent for him and Tom Hoskins vanishing for months at a time.

From your point of view, an artist traveling sells more records for your company. I don't want John to travel any more than he wants to, but I don't want him not to have the opportunity to travel any less than he wants to. He wants to keep playing and traveling on a limited basis and he is completely unaware that he is an artist in demand.

You make your own decision on this. I have tried to do right for Son, Skip and Booker, and I obviously will do my best to do right for John. He has asked me to meet him in Philadelphia about the middle of next month so he can come to New York to finish recording. Tosh Seeger called me about a Channel 47 program and I told her that the 19th (a Thursday) would be a suitable date. I guess that he could do his recording on the 18th and 19th if that is alright with you.

I hope that you will write to John. His address is: No. #1 North Levee Street, Grenada, Mississippi. He has some definite opinions about this but he is awed and afraid of Tom and wouldn't say anything in your office. Just write to him and I'm willing to be guided by his decision.

I'm sorry that you were put in a bad position last week. I would have done anything to spare John the shock of seeing Tom Hoskins standing there when the elevator doors opened at Vanguard and he was standing there waiting.

Do the best you can on this and give me a call if there are any questions.

Best wishes,

Dick

Dick Waterman

EXHIBIT 11

EXHIBIT 2 - LETTER UNDATED FROM DICK WATERMAN TO MAYNARD SOLOMON 553e
ANNEXED TO FOREGOING REQUEST

Productions

PARKER STREET, (617) 876-9837

ambridge, Mass.,

Maynard,

I wrote and mailed the letter last night and forgot to enclose the contract that I was talking about.

Dick Waterman

epresenting the finest Traditional blues, gospel Artists

EXHIBIT 2

EXHIBIT V-1 - TAPE LOG

TAPE LOG

First Library of Congress Session - Reel 1

1. Monday Morning Blues n.g.
2. Monday Morning Blues 3:07
3. Identification and short interview by Joe Hickerson and Dick Spottswood
3. Avalon Blues 3:39
   more interview (1st blues he heard)
4. Joe Turner 2:52
5. Hop Joint 0:45
   drinks and Wm Henry Carlson story

Reel 2

1. Good Morning Miss Carrie 1:00
2. Richland Women Blues 4:04
3. Nobody's Dirty Business 3:52

Reel 3

interview: meeting Lonnie Johnson, etc.

1. Frankie & Albert 3:57
   interview: John's early musical influences and experiences; description of country dance; playing technique (making strings say what he wants them to)
2. Spanish Fandang 2:20
3. Casey Jones 4:25
4. Pal-lee 1:37
5. If You Don't Want Me 1:46

Reel 4

1. If You Don't Want Me 1:32
2. Pay Day 2:52
   Spottswood comes back-[redacted]
3. Got The Blues, Can't Be Satisfied 2:53
4. Louis Collins 2:42-spinoff
5. Louis Collins 3:08
   explanation of Louis Collins
6. Trouble I've Had All My Days 4:23
7. Stackolee 4:06

Reel 5

1. See See Rider 2:41
   long rap: barrels and $$ and jesse James treasure; Kid Dalton whiskey
2. Spike Drive (John Henry) 3:14
3. Pallet on the Floor 4:25
4. Rubber Dolly 1:23
5. Salty Dog 2:45
6 My Creole Belle 2:01
7. Let the Mermaids Flirt w/ me 2:39-runoff

Ed
V-1

First Library of Congress Session (con't.)

Reel 6

1. Let the Mermaids Flirt With Me 3:02
2. Candy Man 2:50
3. Coffee Blues 2:47
4. Hey, Baby, Right Away 1:44
5. Slidin Delta 2:59
6. Casey Jones 4:58
7. Stock Time 1:38
8. Lazy Blues 2:12
9. Beulah Land 2:25
10. Oh, Mary, Don't You Weep 2:10
11. Glory, Glory Hallelujah 4:36
12. Keep On Knocking 3:00

Reel 7

1. What A Friend We Have in Jesus 2:18
2. Waiting For You 4:15
3. Avalon Blues 3:23
4. Stackolee 3:57
5. Over in Glory Land 1:00
6. Walking The Floor Over You 1:32
7. Meeting Tonight 2:15
8. Blessed Be the Name of the Lord 2:39
9. When The Roll is Called Up Yonder 2:10
10. Royal Telephone 2:25
11. Blind Man Sat in the Way and Cried 2:19
12. Where Shall I Be 2:57

Reel 8

1. Weeping and Wailing 2:40
2. Farther Along 3:25
3. Do Lord Remember Me 3:05
4. Were You There When They Crucified My Lord 2:32
5. Glory To His Name 1:47
6. I'll Fly Away 0:50
7. The Tender Virgins 2:57

LC Session; Reel 8, con't.

8. Pay Day 3:15
9. If You Don't Want Me 1:30
10. Nobody Cares For Me 1:43
11. Corrina, Corrina 2:10

Reel 9

1. Funky Butt 1:30 + 1:00
2. Cow Hooking Blues 3:35
3. I'm Satisfied 1:52
4. Ain't Nobody But You Babe 2:15
5. The First Shot Missed Him 1:05
6. Shortnin' Bread 2:04
7. Redwing 1:47
8. Fall That Sack 0:48
9. Four O'Clock Blues 1:35
10. C.C. Rider 3:25
11. I Got Mine 1:35
12. Bill Bailey 0:45
13. Good Morning Miss Carrie 1:50

Reel 10

1. Jim Cannan 1:45
2. Alabama Bound ; 1:20
3. Looking This Way 2:04
4. God's Unchanging Hand 1:45
5. Poor Boy Long Ways From Home 1:45
6. Frankie #2 5:20
7. Put Me Off in Texas 2:00

Reel 11

1. Salty Dog #2 1:00
2. Chicken 2:15
3. Chicken 0:55
4. Funky Butt 1:45
5. Sunshine 2:05
6. Will the Circle Be Unbroken 2:45

TAPE LOG

LC Session, con't. Reel 12

1. You Got To Die 1:15
2. Stinging Snake Story 4:00
3. Panther-Bobcat Story 12:00

Discovery Tape

0:00	intro blues "cow hooking" instrumental
2:30	Tom asks where born, etc.
4:45	mother buys guitar
5:00	asks about childhood; fatherless; 8 brothers
6:00	school, 4th grade, lot's of people think he's educ."
7:00	Mr. "Original Perkins"
7:35	Early records
8:45	1:00 in a.m.; trip to memphis
11:55	$41.71 $49 - train fare in '29
13:00	Lonnie Johnson
14:00	Radio station '40 or '41
16:00	Children and grandchildeen
16:30	John Smith Hurt
16:45	Ella Mae and Andrew
17:00	"Bungalow" Jesse; working for Perkins
18:00	con't. Perkins
19:30	Jesse "Dis you ever play them Spoonful"
19:45	Nobody's business
23:00	Casey Jones 2 ways Jesse
24:00	Casey Jones
27:45	Rooster
29:40	Stagolee
33:00	Tome asks of Stagolee
36:30	Richland's Women Blues
39:50	w.e.
40:10	Rooster
41:40	Coffee Blues (Rooster
42:15	Roosteer
43:30	Monday Morning Blues; Jesse "Ella Mae lock the door"
44:15	John "I just can't remember"
45:20	Do Lord, Jesse and Gertrude
48:30	Rooster (double) Triple 4 5 6 7 "I got it"
50:00	Precious Lord, Take My Hand
55:25	Candy Man - Salty Dog; Candy Man Again
	Frankie
Discovery,	Side Two
1:25	Talkin' Casey Jones
6:15	"Whooee" Jesse "Lawd" etc.
6:40	Waitin for you John and Jesse
11:10	Rooster Tome good talk
13:00	Got the Blues (Rooster) 2 3 4 5
	good for Vongrs 6 7 8 9
17:00	Mermaid Blues
21:25	Ain't Nobody But you
24:00	Jessee "old time music" John to 1913 making music
25:45	TH "Still play 'Good Girl Catch YOU?"
26:15	Good Girl (pallet on floor) ends in laughter, <u>good</u>
	more pallet, more laughter
34:00	take this hammer
38:45	Preaching on camp grounds, glorry - girls w/ rooster
42:20	"Made me remember
	Louis Collins
47:15	How Old are you" 1873 WWI Jesse
50:45	Holcomb H-O-L-C-O-M-B
55:30	blues
59:00	led your child come in G. Hoskins

TAPE LOG

Silitch 4/2/63 Sessions

	Reel (
1. Trouble incl	3:45
2. Trouble (start missing)	1:30
3. Joe Turner	3:30
4. Woke Up This Morning Bls	5:50
5. Avalon	3:25
6. Coffee Blues	2:45
7. Got The Blues	3:05
	Reel 5
1. Waiting For You	3:20
2. Candy Man	2:25
3. Sliding Delta	3:30
4. Sliding Delta	2:55
5 Candy Man	2:05
6. Satisfied	2:20
7. Richland (12 string)	3:30
7. Monday Morn (12 String) start missing & #8:	3:10
	Reel 27
1. Glory Glory (12 string)	4:15
2. Spanish Flangdang	0:45
3. Spanish Flangdang	1:25
	Reel 28
4. Talking Casey	5:25
5. Blues (interruped)	2:30
6. Avalon Blues (start missing)	0:45
7. Waiting For You (start missing)	2:00
8. Satisfied	2:00
9. Monday Morning Bls	incl to end
	Reel 29
10. Frankie	3:45
11. Trouble	5:30
12. Trouble incl.	3:80
	Reel 30
12. (con't) Trouble	1:15
13. Avalon incl	1:10
	Reel 31
14. Spoonful	3:00
15. Got The Blues	3:10
16. Waiting For You incl	
	Reel 32
16. (con't) #7 Reel 28 & Reel 31	
17. Salty Dog	2:00
18. Pallet on the Floor	2:15
	Reel 33
19. Satisfied (reel 28 #8)	1:15
20. Candy Man	2:50
21. Louis Collins	2:20
22. Mary Don't You Weep	1:40
24. Do Lord	2:35

Ontario Place 10/12/63 Perls

1. Frankie	3:50
2. Fandang	1:50
3. Talkin' Casey	4:10
4. Coffee (mike stand noise)	3:30
5. Candy Man	3:10
6. Avalon	4:10
7. Pallet	4:10
8. Stop Time	2:20
9. Sliding Delta	4:10
10. Long Lonesome Bls	4:50
11. Waiting For You incl	4:00

Open Way 11/5/63 Perls

1. Pallet w/ Hoskins, Papalardi	3:15
2. Sliding Delta w/ H&P	3:40
3. Candy Man w/H&P	3:30
4. Monday Morning Bls w/ H&P	4:00
5. C.C. Rider w/ H&P	3:00
6. Stagolee w/ H&P	3:40
7. Casey w/ H&P	4:20
8. Long Lonesome	6:00
9. Avalon	3:00
10. Nobody's Business	3:10

Reel 2

1. Nobody's Bus. (Papalardi 2nd gtr)	3:40
2. Spoonful "	3:35
3. Mermaid "	3:35
4. Richland "	4:40
5. Spike Drifer	2:50
6. Waiting For You	4:20

Kuykendall — Reel 1

1. Got to Have Me Anyhow	3:15
2. " diff. vers.	2:40
3. Peralee	3:00
4. 4 O'clock, Jus fo day	2:40
5. "	1:05

Reel 1? Live Ontario Place

1. Nobody But You	3:20
2. Keep a Knockin'	4:00
3. Mermaids	4:20
4. Rubber Dolly	2:55

Reel 2? 7/7/63

1. Lazy Blues	3:10
2. "	2:30
3. "	1:30
4. "	2:00
5. Blind Man Sat & Cried	2:35
6. "	2:00
7. Rock of Ages	2:30
8.	

(Kuykendall, Reel 2, 7/7/63, con't.)

8. Honey, Right Away	2:35
	Reel 1, Session 2
1. Pallet on the floor	3:20
2. "	2:30
3. Nobody's Business	3:05
4. Casey Jones	4:30
	Reel 2
1. Louis Collins incl fragment	
2. Richland (12 string)	4:00
	Reel 3, side 1
1. Monday Blues	5:45
	Reel 4, side 1
1. Casey Jones	4:25
	Reel 5, side 1
1. Casey Jones	3:40
2. Creole Belle	1:15
3. Candy Man	2:25
4. Louis Collins	2:20
	Reel 4, side 2
1. Richland (12 string)	5:05
2. Monday (12 string)	4:25
	Reel 5, side 2
1. Take This Hammer	3:15
2. Waiting For You	4:30
3. Frankie	4:30
	Reel 6
1. Miss Carrie	1:45
2. Candy Man instrumental	2:15
3. Keep a Knockin	2:20
4. Salty Dog inst.	1:45

Ontario Place 11/27/64 Rosenthal	Reel 1
1. Lonesome Valley	4:40
2. Do Lord	4:25
3. Trouble	4:30
4. Casey Jones	4:20
5. Mermaid (intro 3:00)	3:45
	Reel 2
1. Richland	5:00
2. Pallet	3:00
3. Salty Dog	2:30

TAPE LOG

Ontario Place 11/27/64 Rosenthal (con't)

	Reel 3
1. The Saints	4:10
2. I Shall Not Be Moved	4:45
3. Chicken	1:00
4. Candy Man	3:30
5. Louis Collins	3:45
6. Hot Time	2:30
7. Nobody's Bus. (short intro:15)	3:30
	Reel 4
1. Avalon	3:55
2. Sliding Delta (intro 1:30)	2.50
3. Coffee (intro 1:30)	2:50
4. C.C. Rider	3:20
5. Joe Turner	2:45
6. Creole Belle	2:15
7. Spanish Flangdang	2:25
8. Talkin Casey	4:30
	Reel 5
1. Welcome Address (intro 5:00)	2:40
2. Frankie	6:20
3. Lonesome is I	3:15
4. Stagolee (intro 3:00)	4:00
5. Lonesome Valley	4:00
6. Do Lord	3:15
7. Long Lonesome	3:10
	Reel 6
1. Lonesome Valley	4:00
2. Do Lord	4:40
3. Monday Morning	4:30
4. Stagolee (w/ intro)	4:45
5. Rock of Ages	2:25
6. Trouble	5:25
7. Mermaid	6:25
(intro W.E. Meyers 5 yr contract)	
	Reel 7
1. Waiting For Your	5:45
2. Nobody's Business	3:20
3. Casey Jones	5:30
4. Louis Collins	4:20
5. Keep a Knockin	2:35
6. You Are My Sunshine	2:15
7. Pallet	4:05

Second Fret June 65	Reel 1
1. Nearer My God to Thee	4:45
2. Satisfied	3:20
3. Got the Blues	3:15
4. Funky Butt	1:30
5. Corinne	3:30
6. Tell Me Baby	4:00
7. Spoonful	3:35
	Reel 2
1. Pallet	3:10
2. Carrie	1:45
3. Hot Time	3:20
4. Waiting for You	5:25
5. Candy Man	2:45
6. Long Lonesome	1:50
7. Salty Dog	2:40
8. Stagolee	3:40
9. Avalon	3:40
Cafe Yana - Campbell Tape	Reel 2, side one
1. Oh Mary	2:20 w/ TH
2. Slidin Delta	3:15 w/ TH
3. Boogie	3:15
4. Funky Butt	w/ TH
4. Stop Time	2:00 w/ TH
5. Carrie	2:20 w/ TH
6. Chicken	1:00
7. Spike Driver	3:30
	side two
1. Stagolee	5:00
2. Joe Turner	3:50
3. Sunshine w/ crowd	
4. Fandang	
5. Frankie	4:50
6. Pallet	4:15
7. Keep a Knockin	2:15
MJH at Yana	Reel 1
1. Do Lord	4:45
2. Burden Down	4:25
3. C.C. Rider	3:55
4. Boogie & Worried Bls	4:05
5. Monday Morning	4:45
6. Creole Belle	2:15
7. Avalon w/ Al Wilson, Harp	3:20
8. Got the Blues "	2:50
9. Cow Hooking "	3:50
10. Spike Drive "	3:25

MJH at Yana	Reel 2
1. Trouble w/ harp	3:40
2. Slidin' Delta " (intro)	3:35
3. Salty God	3:05
4. Casey Jones (12 String)	4:20
5. Nobody's Business	4:40
6. Waiting For You	6:30
7. Coffee w/ intro	4:15
8. Candy Man	3:15
9, Stagolee	5:05

Cambridge Studio 10/26/64	Reel 1
1. Candy Man	3:30
2. Joe Turner	3:00
3. Creole Belle	2:00
4. Louis Collins	5:30
5. Cow Hooking	3:55
6. Candy Man	3:50
7. Rubber Dolly	2:15

Boston - Denson?	Reel 1
1. Funky Butt	2:00
2. Lazy Bls	2:20
3. Long Lonesome Bls	6:00
4. Frankie	4:45

MJH at Unicorn, Boston 10/30/64	Reel 1
1. What a Friend we Have in Jesus	2:50
2. Candy Man	4:25
3. Blessed Be the Name of the Lord	3:20
4. Guitar Boogie/Worried Bls	5:25
5. Avalon	4:35
7. Sliding Delta	3:00
8. Spike Drive	3:45
9. Chicken	1:15
10. Candy Man	4:25

Unicorn 11/1/64	Reel 2
7. Farther Along	4:00
8. Lonesome Valley	4:05
9. Louis Collins	4:15
10. Lonesome is I	2:25
11. Worried Blues	3:40
12. Monday Morning	4:00
13. Chicken	1:00
14. Stop Time	1:30

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

DEFENDANT'S EXHIBIT G1 - LETTER DATED MAY 3, 1965
FROM WILLIAM J. POWELL TO ROBERT W. SCOTT

G-1

May 3, 1965

Mr. Robert W. Scott, A & R Executive
Mercury Record Corporation
745 Fifth Avenue, Suite 315
New York, New York

RE: Contract between Mercury and Music Research, Inc., regarding recording of John Hurt

Dear Mr. Scott:

Please let me first express my gratitude for your having taken the trouble to come to Washington last April 5th to appear as an expert witness in the then pending litigation.

The purpose of this letter is to begin our negotiation for a contract between your company and Music Research, Inc., for the recording of Mississippi John Hurt. I feel, as I am sure you also feel, that we should finalize this contract in the immediate future to take advantage of the status of the blues market at present.

Referring to the contract drawn up by your company in the name of John Hurt, a/k/a Mississippi John Hurt, c/o Herbert S. Gart, the following points are submitted for your consideration:

1. Of course, the contracting parties would have to be changed to Mercury Record Productions, Inc., and Music Research, Inc.

2. Instead of the contract being an employment contract, it would be a contract between the two corporations for the right to record John Hurt. This comment refers to paragraph 1 of the referred to contract.

3. Your paragraph 2 provides for four twelve inch long play phonograph records to be recorded no later than six months from the date of the contract. Would your company be interested in a contract for only two long play phonograph records. This matter has been discussed between myself and Mr. Hoskins, and he has not insisted on two recordings, but would like to know if you are flexible on this point.

Page 2

BEST COPY AVAILABLE

4. Your paragraph 3 agrees to pay artist $.40 for each 12" LP phonograph record of 90% of the net amount of 12" LP records sold in the United States. As I recall our telephone conversation regarding this point, you indicated that Mercury would be willing to pay $.40 per LP of 100% of the net amount of recordings sold in the United States. Can we modify the contract in this regard?

5. Paragraph 3 of your contract makes it very flexible as to whether Mercury will issue an LP on which both sides are John Hurt, only one side John Hurt, or only a portion of one side is John Hurt. This, of course, puts the matter entirely in the discretion of Mercury. Would your company be willing to commit itself for full LP recordings, including both sides, of the music of John Hurt?

plus 2 45's

6. Your paragraph 4 refers to "royalties", whereas in the renegotiated contract with Music Research, Inc., the term "royalties" should be replaced with some term indicating that the consideration is a price for the right to make the LP recordings.

7. Your paragraph 4 refers to royalties on recordings sold outside the United States and to recordings sold in the United States other than 12" LP recordings. There the formula is 5% of 90% of the suggested list price, exclusive of federal excise tax and less the cost of album, covers, jackets, boxes, or any other type of package or container. Would your company be willing to base the 5% on 100% of the suggested list price? Another point to be discussed in this paragraph is the general lack of specificity of this paragraph. The paragraph gives Mercury the sole discretion to base their percentages on the retail list prices in the country of sale, the country of manufacture, or of England. What is the difference between the list prices abroad and the list prices in this country? Could this paragraph be more specific in this matter? The term "other than 12" LP phonograph records," refers, I believe, to 45 rpm singles, but the paragraph does not specifically so state. Could the contract be more definite in this regard? Would your company consider applying the formula in this paragraph to the same factors except omitting the reduction due to cost of album covers, jackets, boxes, or any other type of package or container?

45's

8. Your paragraph 5 does not explain in enough detail exactly what a "promotional or discount plan" is. Would you be willing to make this paragraph a little more difinite?

9. Paragraph 6 is much too general. As I understand its terms, Mercury would have the right to sell records as one of a required number of records purchased by a record club member without any part of the said purchase price being paid to Music Research, Inc. That paragraph also gives Mercury the right to give away as many records as it chooses as inducement for people to join the record club. While perhaps it would be a good thing to allow the free records to be distributed in this manner for promotional purposes, it seems to me if a club member is paying for a record, even though that record is one of the required records which a member must purchase, that Music Research should receive some percentage of the amount paid for the record. What is your opinion of this point?

10. Your paragraph 7 requires a deduction from the royalties due the artist equal to 1-1/2 cents times the number of each musical composition contains in any record where the copyright on the musical composition is not owned or controlled by the artist himself. This paragraph should be taken out of the contract since Music Research, Inc., has already made arrangements for assigning copyrights of John Hurt's compositions. How does Mercury know that the deduction of 1-1/2 cents times the number of each musical composition will cover the copyright assignment consideration of the publisher?

11. Has it been definitely decided that John Hurt's music will be issued on the Philips label? Is there any possibility of Music Research having its desires seriously considered with regard to which label will be used?

12. Would Mercury consider reducing the time of the second release from 1-1/2 years after the date of the execution of the contract, to six months? This point refers to paragraph 15 of your contract. Would Mercury agree to some time limitation being specified for the third and fourth recordings' release dates?

13. Your paragraph 16 contains the statement, "Artist further warrants that he has not performed or agreed to perform any composition that will be recorded hereunder for any other person for the purpose of making phonograph records within a period of five years prior to the date such composition will be recorded hereunder, etc. and so forth."

As you know, John Hurt has made two LP recordings which have been released on Piedmont, Chesapeake, and Griffon labels, but have been distributed in relatively small numbers. It may well be that Mercury would like to re-record many or all of the songs of John Hurt which appeared on these recordings, and in that event, the above quoted paragraph will have to be removed from the contract. Referring to your paragraph 16, there is no "Piedmont Record Company", Piedmont being merely the label on which Music Research, Inc., has released its recordings.

14. Would your company agree to make the contract non-assignable? As you may well understand, Music Research, Inc., is interested in this contract to a great extent because of the use of the distribution system of Mercury Record Productions, Inc.

15. Your paragraph 20 would have to be substantially amended, or removed from the contract. It provides that Mercury at its sole discretion will have the right to give, lend, lease or sell to any person, firm or company, matrices, stampers, or master recordings from which records reproducing all or any part of the artist's services hereunder may be manufactured or sold. I feel that the best course with regard to this paragraph would be to simply remove it entirely from the contract.

Please let me have your comments on the above points at your earliest possible convenience, so that we can come to some agreement with regard to this matter as quickly as possible.

Thanking you again for your willingness to come to Washington in aid of Music Research and its case against the Spottswoods, I am,

With best regards,

William J. Powell

WJP/lmt
copy to Music Research, Inc.

EXHIBIT G2 - LETTER DATED JUNE 10, 1966
FROM SANFORD R. ROSS TO TOM HOSKINS

DEFENDANT 569a

EXHIBIT D
U. S. DIST. COURT
S. D. OF N. Y.

SANFORD R. ROSS
ATTORNEY AND COUNSELOR AT LAW

741

G-2

June 10, 1966

Mr. Tom Hoskins
Box 1803
Annapolis, Maryland 21401

Re: Mississippi John Hurt

Dear Mr. Hoskins:

On May 24th I spoke with Mr. Lee Talbot, Secretary-Treasurer of Music Research, Inc., advising that Mr. Mississippi John Hurt, who has retained my services, had decided to terminate the management agreement entered into between Music Research Inc., on March 15, 1963. Mr. Talbot advised that he would get in touch with me and since he had failed to communicate with this office, I am sending this letter as formal notice to you and Music Research, Inc. to no longer rely in any way upon the aforesaid management agreement.

Mr. Hurt has decided to terminate the agreement for several reasons, amongst same being the lack of your corporation and yourself devoting time to the artist in accordance with the agreement, and the obvious inequity attendant to said agreement.

This is to further advise that any and all tapes or other recordings embodying the performances of Mr. Hurt should be returned immediately to my office, since they were not done within the provisions of the applicable union regulations to which Mr. Hurt is bound. I have been advised by both the American Federation of Musicians and the American Federation of Television and Radio Artists, that your company is not a signatory to these phonograph record labor agreements, and therefore it is impossible for you to have performed in accordance with same. These recordings have therefore been illegally made and must be returned at once. I have been further advised that Mr. Hurt has entered into an exclusive recording agreement with Vanguard Recording Society, Inc. and that said company is the only party having the exclusive rights to release phonograph records or derivative therefrom embodying the performances of Mr. Hurt. That company has further

advised me that they shall take any and all necessary legal action to enforce their exclusivity provisions including their right to enjoin any third parties from releasing records to the general public embodying Mr. Hurts performances. I would strongly suggest that you immediately comply with this demand and return said tapes to my office.

You are formally advised to no longer hold yourself out, or to hold Music Research Inc. as having anything to do with Mr. Hurt pursuant to the management agreement which is hereby terminated.

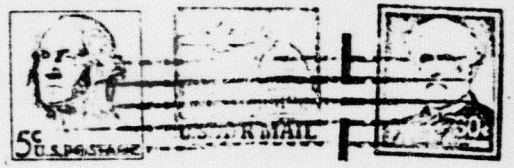
I trust that no difficulty shall ensue by virtue of this letter, but rest assured that my client has advised me to take all appropriate steps in accordance with his feelings.

Very truly yours,

SANFORD R. ROSS

SRR/s

ORD R. ROSS
/ AND COUNSELOR AT LAW
/IFTH AVENUE - SUITE 1512
NEW YORK, N. Y. 10022

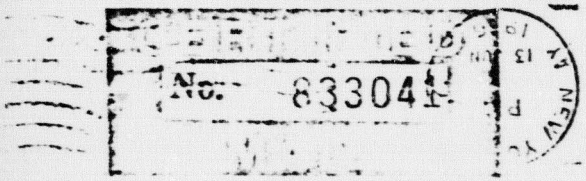


Air Mail

Postage due 5 cents

Mr. Tom Hoskins
Box 1803
Annapolis, Maryland 21401

Return Receipt Requested



571a

JUDGMENT ENTERED NOVEMBER 10, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

572a

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC.,

Plaintiffs,

-against-

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff,

-against-

HERB GART d/b/a HERB GART MANAGEMENT INC.,

Third-Party Defendant.

73 Civ. 394 (C.L.B.)

JUDGMENT # 75884

DISTRICT COURT
FILED
NOV 10 1975
S. D. OF N. Y.

This action having come on for trial before the Court and a jury, the Honorable Charles L. Brieant, Jr., District Judge, presiding, and, at the close of the plaintiff's evidence the defendant having moved for a directed verdict in favor of the defendant and against the plaintiffs, and the Court having granted said motion in part and denied said motion in part, and the issue remaining having been duly tried and the jury having duly rendered its verdict, and the claim of the defendant against the third party defendant having been dismissed, with prejudice, by stipulation of counsel, and so ordered by the Court,

It is Ordered and Adjudged

that the defendant's motion for a directed verdict be granted to the extent that the claims of the plaintiff, Adelphi Records, Inc., be dismissed and that the claims of the plaintiff, Music Research, Inc. sounding in unfair competition, unjust enrichment and tortious interference with contractual rights be

MICROFILM NOV 14 1975

dismissed, and that, on the remaining claim of the plaintiff, Music Research, Inc., the plaintiff, Music Research, Inc., recover of the defendant, Vanguard Recording Society, Inc., the sum of $275,000 ~~with interest thereon at the rate of 6 per cent or as otherwise provided by law,~~ and its costs to be taxed by the Clerk, and

CLBB/ USDJ

It is further Ordered and Adjudged

that, pursuant to stipulation of counsel and order of the Court, the claim of the defendant Vanguard Recording Society, Inc. against the third party defendat, Herb Gart d/b/a Herb Gart Management, Inc. be dismissed with prejudice and without costs to either the defendant or the third party defendant.

Dated: New York, New York
November 7th 1975

Charles L. Brieant Jr
U.S.D.J. AD

JUDGMENT ENTERED - 11-10-75.

Raymond F. Burghardt
CLERK

11/17/75 - The appearance in opposition, Bill of Costs as Taxed in the sum of $525.10, in favor of plaintiff Music Research, Inc. only, and added to the judgment.

Raymond F. Burghardt
CLERK

ORDER TO SHOW CAUSE DATED JANUARY 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant and Third-Party Plaintiff, -against- HERB GART d/b/a HERB GART MANAGEMENT INC., Third-Party Deferdant.	ORDER TO SHOW CAUSE 73 Civ. 394 (C.L.B., Jr.)

Upon the annexed affidavits of Maynard Solomon, John A. Vassallo and Bruno Schachner, all sworn January 29, 1976, it is

ORDERED, that plaintiff Music Research, Inc. show cause at a motion term of this Court, to be held in Room 23 , United States District Courthouse, Foley Square, New York, on the 6th day of Feb , 1976, at 2:00 o'clock in the afternoon of that day, why an order should not be made herein vacating the judgment heretofore entered herein and granting defendant a new trial pursuant to Rule 60(b)(2) and (3) F.R.Civ.P., on the following grounds:(1)defendant has newly discovered evidence which would have been sufficient to change the outcome of the trial; and (2) plaintiffs committed fraud, made misrepresentations, and otherwise misconducted themselves at the trial; and it is further

ORDERED, that service of a copy of this order and the papers upon which it is granted, on plaintiff's attorneys, on or before Jan 30, 1976, shall be sufficient service thereof.

Dated: January 20, 1976
NY NY
1:00 PM

U.S.D.J.

AFFIDAVIT OF MAYNARD SOLOMON IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant and Third-Party Plaintiff, -against- HERB GART, d/b/a HERB GART MANAGEMENT INC., Third-Party Defendant.	AFFIDAVIT 73 Civ. 394 (C.L.B., Jr.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MAYNARD SOLOMON, being duly sworn, says:

1. I am an officer of Vanguard Recording Society, Inc., defendant in this action. I make this affidavit in support of defendant's motion for a new trial.

2. In this action, the jury awarded plaintiff Music Research, Inc. $275,000 as damages on a claim that defendant wrongfully destroyed the market for additional John Hurt recordings which plaintiff claimed it had a right to release.

3. On January 14, 1976, I was alerted for the first time by one John Irvine to facts which, if presented to the jury at trial, would undoubtedly have changed the outcome of the trial.

4. Since that date defendant has obtained evidence proving that despite the claim of a destroyed market, at least as early as July 1975 plaintiffs, Music Research, Inc. and Adelphi Records, Inc., released for sale a new Hurt album entitled "Mississippi John Hurt Volume One of a Legacy". One of these record albums will be handed to the Court on the return date of this motion.

5. This record album contains Mr. Hurt's performances of thirteen songs, all included in plaintiff Music Research's vault tapes (see Defendant's Trial Exhibit V-1). Nine of those songs had been included in the Hurt albums released by defendant.

6. A copy of the front and the back of the jacket of plaintiffs' new Hurt album is annexed hereto and marked Exhibit A.

7. Exhibit A shows that the album was released on the "Piedmont-Legacy" label and was assigned album number CLPS - 1068. The album jacket bears the following legend:

> "Produced by Music Research, Inc., producers of Piedmont and Bullfrog records. For a free catalog of albums of related interest, please write to:
>
> Music Research, Inc.
> P. O. Box 288
> Silver Spring, MD 20907."

In the lower left-hand corner of the back of the jacket Piedmont Records claims a 1975 performance copyright.

8. Weeks prior to the trial of this action, plaintiffs' album was reviewed in the October 2, 1975 issue of Jazz Journal, a jazz magazine published in Great Britain. A copy of the review is attached hereto and marked Exhibit B.

9. Last week my brother, defendant's President, spoke by telephone with Derek Stewart-Baxter, who had written the review for the Jazz Journal. He told my brother that he had obtained the record in England prior to September 10, 1975, the day on which the October 2 issue of Jazz Journal was ready for print.

10. Plaintiffs' new Hurt album was released in New York in July of 1975 -- several months before the trial of this action. I annex as Exhibits C and D to this affidavit copies of records made available by SMG Distributors, Inc., a New York distributor for plaintiffs, Music Research and Adelphi. Exhibit C shows that SMG sent a purchase order to Adelphi dated July 16, 1975 ordering 100 copies of plaintiffs' new Hurt album. Exhibit D shows that on July 23, 1975, plaintiff Adelphi invoiced SMG for 100 copies of the album already shipped at $2.85 per album. Adelphi's invoice also shows that it shipped an additional "25 no cost" promotional albums normally shipped to distributors on the release of a new album.

11. That Exhibits C and D deal with Piedmont's "Mississippi John Hurt Volume One of a Legacy" is shown by their reference to the number of that album appearing on the album jacket and label: CPLS 1068.

12. The album which will be handed up to the Court was purchased by an employee of defendant on January 15, 1976, the day after I was alerted to its release, from the King Karol record store, 111 West 42nd Street, New York City. The sticker affixed to the face of the album jacket shows its retail price of $5.89. The disc itself bears the imprint of Adelphi.

13. Defendant has also learned (see the accompanying affidavits of its attorneys) that Rosenthal, President of Adelphi Records, lied by denying plaintiffs' release of their album to John Irvine, the person who brought it to my attention on January 14, 1976. He was forced to admit the truth only when Irvine confronted Rosenthal with the fact that he had obtained a copy of the album. This conversation took place about a week before Christmas 1975.

14. A few days later Hoskins, President of Music Research, tried to induce Mr. Irvine not to tell anyone that plaintiffs had released the album in question.

15. Defendant has reason to believe that since January 16, 1976 plaintiffs have made some arrangement with Mr. Irvine, who was negotiating a deal with them pertaining to John Hurt's music, whereby they induced him not to give an affidavit on this motion, after he had agreed to do so. As is shown in greater detail in the accompanying affidavits of defendant's attorneys, Irvine stood them up on January 19th without notice and has since refused to speak to them.

16. As mentioned above, the foregoing information and evidence has come into defendant's possession since January 14, 1976. On that day, Mr. Irvine, a disc jockey employed by radio station CKFH in Toronto, Canada, telephoned me and told me of plaintiff's release of a new Hurt album prior to trial.

17. On a number of occasions prior to the trial, I had spoken with Mr. Irvine by telephone. He also had a dispute with plaintiffs about rights to Hurt music and gave me information which formed the basis of some of defendant's trial

counsel's cross-examination (Tr. 192-96).

18. On January 14, 1976, Irvine told me that he had learned about a month earlier, in December 1975 (long after the trial of this action) that plaintiffs had released a new Hurt album.

19. Irvine told me that plaintiff's release of that album had been brought to his attention by Jazz Journal, a jazz magazine published in Great Britain, which contained a review of the Piedmont album in question. Irvine told me that he had obtained the review and then confirmed through Almada Records, a distributor for plaintiffs in Canada, that the album had indeed been released and was obtainable in Canada. I asked Mr. Irvine to mail me immediately a copy of the Piedmont album and he said that he would do so.

20. When I was unable to find a review of the Piedmont album in the issue of Jazz Journal mentioned to me by Mr. Irvine in our telephone conversation on January 14th (he had mistakenly told me that the review was contained in the December issue of that publication), I telephoned him on January 15th. In that telephone conversation, he gave me the correct issue of Jazz Journal, an excerpt of which is annexed as Exhibit B to this affidavit.

21. In the same telephone conversation, he also agreed to discuss what he had told me with John A. Vassallo, one of defendant's attorneys. In fact, he said that he was anxious to do so in the hope that Mr. Vassallo could advise him concerning his own disputes with plaintiffs.

22. My attorneys' accompanying affidavits relate their telephone conversationswith Mr. Irvine beginning on Friday, January 16th and my exchange of telegrams with him thereafter.

23. I reiterate that until Mr. Irvine telephoned me on January 14, 1976, defendant had no suspicion -- much less knowledge -- that in spite of their claims and testimony at the trial of this action, plaintiffs had been selling a new album of Hurt's performances included in Music Research's vault tapes, which they claimed at trial were substantially worthless owing to defendant's release of four Hurt albums.

MAYNARD SOLOMON

Sworn to before me this
29th day of January, 1976.

Notary Public

DORIT A. VASSALLO
Notary Public, State of New York
No. 30-3450353
Qualified in Westchester County
Commission Expires March 30, 1976

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT A - FRONT & BACK OF NEW HURT ALBUM 582a

BEST COPY AVAILABLE

Piedmont-Legacy CLPS 1068

Mississippi John Hurt

SIDE 1:

1. Trouble, I've Had It All My Days 2:40
2. Pera Lee 1:30
3. See See Rider 3:27
4. Louis Collins 1:53
5. Coffee Blues 2:50
6. Nobody's Dirty Business 2:27
7. Do Lord Remember Me (P.D.) 1:48
8. Monday Morning Blues 5:15

Total 21:50

SIDE 2:

1. Let The Mermaids Flirt With Me 2:25
2. Payday 2:55
3. Stack-O-Lee (arr. Hurt) 7:15
4. Casey Jones 3:00
5. Frankie And Albert 5:00

Total 20:35

All titles copyright C 1975 by Mississippi John Hurt-Music Research, Inc.

Album cover drawing by Allan McKinnon.

Produced by Music Research, Inc., producers of Piedmont and Bullfrog records. For a free catalog of albums of related interest, please write to:
Music Research, Inc.
P.O. Box 288
Silver Spring, MD 20907

℗ 1975 Piedmont Records

To say that Mississippi John Hurt was a great artist is an understatement. Not only because he was a compelling performer and an excellent technical master of his instrument, but in the way that very few entertainers can be described as humble, quiet, amazing and magnetic.

His first breath of life occured in 1892 in the small town of Teoc, Mississippi in the heart of the Delta country. John's whole life was centered around that area in almost every type of job except playing his compelling music professionally. He worked primarily as a farm laborer, picking cotton and corn and herding cows while playing music for local gatherings, parties, friends and his own amusement. His first small measure of fame and fortune came about by chance in 1928 when Okeh recording director T.C. Rockwell auditioning in the Mississippi area asked Guitarist and fiddler Narmour and Smith of any other good musicians in the area. John Hurt's name was the first mentioned. After hearing John, Mr. Rockwell asked him to come to Memphis to record for Okeh.

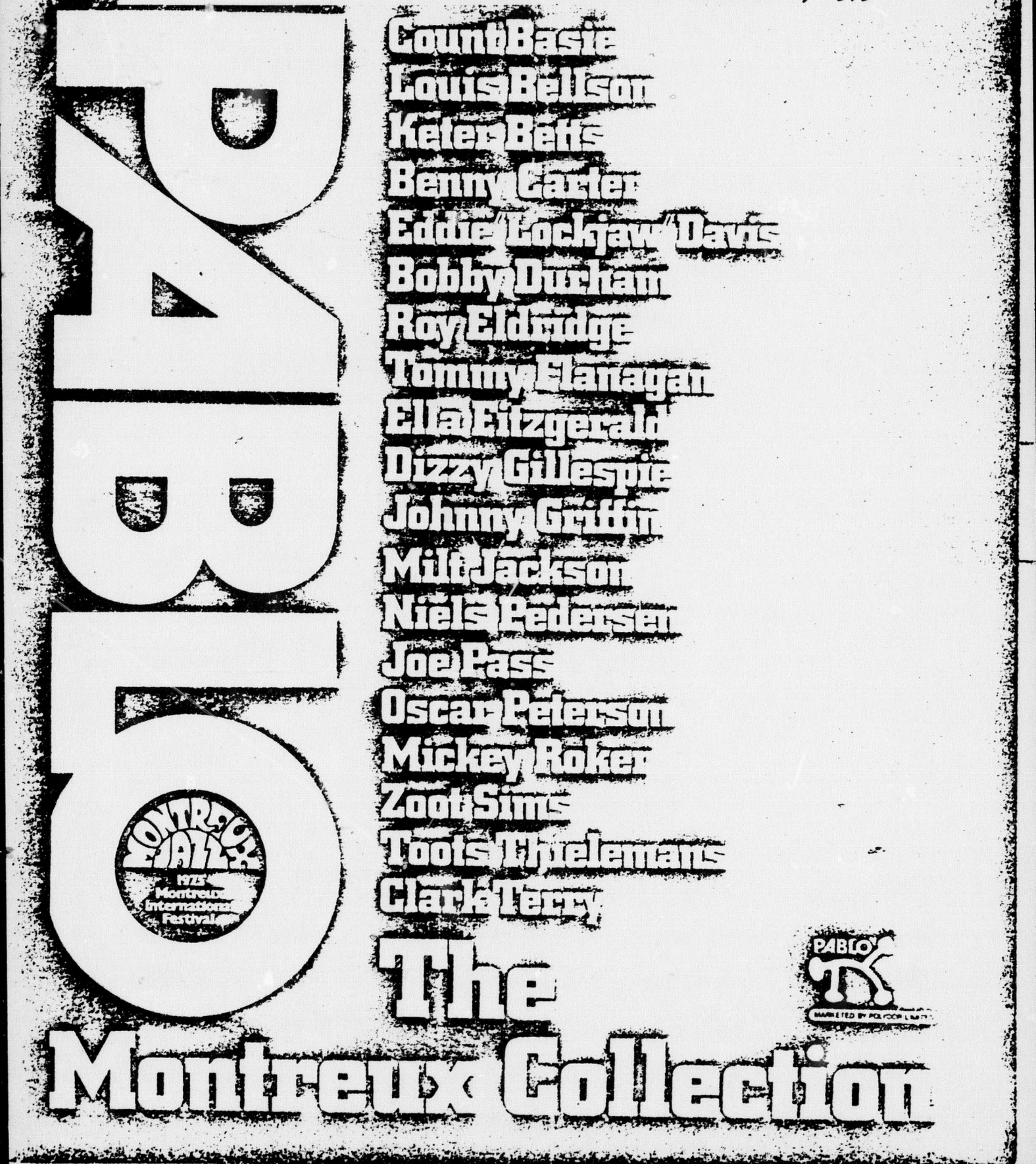
On Valentine's day of 1928 John Hurt journeyed to Memphis to start on his first short trip to musical notoriety which lasted for two more recording sessions in December of that year in New York city. John's greatness had been captured first for the public via phonograph records. But with the depression of 1929 affecting the record business very harshly, Okeh was one of the first to succumb. John forgot about the professional world of records and returned to the small world of the Mississippi Delta. John's greatness however was not stilled but only delayed. In 1963 while on a Mississippi trip, blues collector Tom Hoskins remembered one of the lines from John's 1928 recordings..."Avalon's My Home Town, always on my mind" and seeing Avalon, Mississippi on a map set off on a freak hunch that the now legendary John Hurt might still be around. One stop at the general store in Avalon and John Hurt's greatness was rediscovered after 35 years in waiting.

From then the world learned about John Hurt's musical ability, his songs, his humbleness and compelling humour. With appearances at the Newport Folk Festival's of 1963 and 1964, on the Network TV "Tonight" show, many universities and colleges throughout the U.S. and Canada.

John journeyed back to his home area of Mississippi to live and there is where his story now has ended. However his music will never again be forgotten by the many thousands who heard him again through records and remember seeing him perform. As John himself once said, "I know it and I been knowing it" Now we know it and are so much better for it.....Amen!

J. Evans

EXHIBIT B - REVIEW IN JAZZ JOURNAL OF OCTOBER 2, 1975



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Are we critics as unbalanced as everyone, musicians and public alike, would have us believe, or is it only me who is becoming less catholic in my tastes with the years? I pondered along these lines as I glanced through the results of the latest International Critics Poll in our most revered contemporary DOWN BEAT.

Having dutifully filled in my form, some weeks ago, no small labour of love I assure you, I now find on scanning the results that *not one* of my first choices came in a winner. It may interest you to know that there are 27 categories in this poll, with at least 4 musicians to be named in each. Each category is divided into 'Established' and 'Talent Deserving Of Wider Recognition', so in fact to complete the whole form, one would have to dredge the names of over 200 musicians from the sludgy morass of one's memory. In addition there is The Hall of Fame, the Record of the Year and the Reissue of the Year! A weighty assignment! The winners naturally all came from the modernists, but I was happy to see Basie come in second to Thad Jones/Mel Lewis in the big band slot and Diz win the trumpet section. Others who gained the odd critical nod of confidence were Bob Wilber, beaten a distance by Wayne Shorter on soprano sax; Benny Goodman and Russell Procope second and third to Roland Kirk in the clarinets—this section also gained a mention for Kenny Davern in TDWR. The perennial Joe Venuti, came second to Ponty in the fiddlers, and Joe Williams and Sarah Vaughan took the vocal crowns. Oddly enough J & R Kral won both the Established and the TDWR vocal group sections—obviously a variation on the old music hall joke of 'must have been two other people'. The Hall of Fame was carried off by Cecil Taylor, whose 'Silent Tongues' won the Record of the Year. Tatum's mighty Pablo set and the Onyx Charlie Parkers tied for the best Reissue.

* * *

The British Film Institute's David Meeker is presenting two programmes of jazz films at the National Film Theatre. All produced at the Universal Studios, they include Count Basie (1943 and 1950), Tommy Dorsey (1951), Sarah Vaughan and Herb Jefferies (1950), Ellington (1949/50), Lionel Hampton (1949), Gene Krupa (1949), and Chico Hamilton (1956). Also to be featured are extracts from films featuring Charlie Barnet, Les Brown, Sonny Durham, Woody Herman, Stan Kenton, Billy May, Louis Prima and Jack Teagarden. Booking commences 13th October; for further details ring 01-928 3232.

report of what was termed the World's Jazz Championship, held in Indianapolis in August. I am sorry we haven't the space to print the whole report, but think you might be interested to know it was a triumphant win for Britain with Max Collie's Rhythm Aces coasting in easy winners. But evidently the British influence was strongly felt. The third band, Boston's New Black Eagles were led by ex-Liverpudlian Tony Pringle; the Climax Jazzband from Toledo, Ohio, featured three men from Cheshire, Geoff Holmes (tbn), Bruce Bakewell(clt) and Chris Daniels (bs) and if that is not enough the drummer Max Littlejohn is from Southampton. In addition Frank Ward who led the Cakewalkin' Jass Band hails from Blackburn. Before leaving this brave enterprise, one notes with surprise that Wild Bill Davison's All Stars, complete with Abe Lincoln (tbn), Sol Pace (clt), Cliff Leeman (dm) and Jack Lesberg (dm) couldn't gain an award in this contest, clearly dominated as it was by unsophisticated New Orleans style music. The awards were arrived at by a complicated system of combining public ballot papers with points awarded by a panel of judges including Milt Gabler, Graeme Bell and Terry Walso. It was apparently three days of great fun and a rewarding change from the mammoth New York/Newport clambake. The event was conceived by Max Collie, who is to be heartily applauded on his efforts on behalf of traditional jazz. As Satchmo would have said, without thought of a pun, 'You dawg, you rascal you!'

Allegories between Jazz and the Turf are becoming more and more evident every day. The success of that good if inaptly named animal The Blues, was followed by Blues Again, who also showed a good turn of foot. And now we have a new crop of interesting 2 year olds showing their paces. Fats Waller has so far run without bothering the judges, but it is hoped his time will come. Duke Ellington is another maiden who has yet to score, and we noticed a new name at Newmarket recently, Scott Joplyn. It is regretted that trainer Mr Brittain (or the owner) is a bit raggity with his spelling, but the horse didn't win anyway. So, nothing much yet to get excited about: but for further news of the Sport of Kings, watch this space.

Further to the above, which was squeezed out last month by more important jazz events, comes the news that Duke managed to bring home the bacon last week at the rewarding price of 4-1. Blues Again also obliged, but the others, plus that 4 year old animal King of Swing have yet to score.

some driving and exciting horn. The other gentlemen of the front line are hardly up to the same standard, but Kellin's clarinet is truly in the N.O. vernacular, and Elbert's rusty sounding trombone will please a heap of N.O. music lovers. All-in-all an entertaining album. **S.T.**

EARL HINES/BARNEY BIGARD

GIANTS IN NICE:
(a) I Surrender Dear; (a) Rosetta; (b) It's Wonderful; (b) I Know A Little Bit About A Lot Of Things (19¾ min)—(b) The One I Love Belongs To Somebody Else; (b) Stardust; (b) Do You Know What It Means To Miss New Orleans; Basin St; (b) We Wish You Love (20 min)

(a) Bill Coleman (tpt/vcl); Vic Dickenson (tbn); Barney Bigard (clt); Buddy Tate (ten); Earl Hines (pno); Arvell Shaw (bs); Cozy Cole (dm). Nice-Cimiez 19/7/74.
(b) Bigard; Hines; Jimmy Leary (bs); Teddy Martin (dm). Nice-Cimiez 20/7/74.

(RCA FXL 1 7156 £2.50)

This is a bit bitty—some good tracks, some just so-so. Nobody is heard to much good effect on the opening track, Coleman's vocal sounds in places off-pitch and no one sounds to be really caring. Vic plays one of his humorous bits on **Rosetta**, and Barney is almost at his best on the sparkling version of **Wonderful**. Hines is just great here, as he is also on **One I Love**, (a piano solo which has him playing all over the piano) and a quite staggering **Basin Street**. He sings nicely (if you like his singing) on **We Wish You Love**, one of the best numbers he ever wrote in my opinion, and **New Orleans**.

The rhythm is adequate, but I could have done without Martin's drums on **The One I Love**. **S.T.**

BILLIE HOLIDAY

ORIGINAL SESSIONS 1937-1947:
Lo You Know What It Means To Miss New Orleans; No Detour Ahead; Until The Real Thing Comes Along; Billie's Blues; My Man; Storyville (14¼ min)—Moten Swing (Count Basie Band)*—They Can't Take That Away From Me; Don't Explain; Do Nothing Till You Hear From Me; Lover Man (15 min)—I Can't Pretend; Road To Love; I Cover The Waterfront; I'll Get By* (with Roy Eldridge); *I Love My Man* (with Roy Eldridge) *(15 min)—Lover Come Back To Me; He's Funny Hhat Way; Them There Eyes; Miss Brown To You; Do You Know What It Means To Miss New Orleans (17 min)*

(Festival ALB 144 £3.29)

I confess that I am completely baffled as to how to review this extraordinary hodge-podge of an album. Some of the tracks I cannot trace, **No Detour Ahead** for instance is not the well known one that was issued on Vogue EPV 1128 with accompaniment by the Tiny Grimes Sextet, but a version that is new to me. **Road To Love** on side 3 is the same song! Again, where does the beautiful version of **Billie's Blues** come from? Here she is accompanied only by a very good but unknown pianist. The problems are great, and will I think, give discographers quite a headache. In passing I think I am safe to state that the two tracks with Roy Eldridge have not been issued here before. All I can do at this stage is to indicate what I do know has been available in this country. **They Can't Take That Away From Me** and **Swing Brothers Swing** must be in everybody's collection I imagine, they come of course, from the famous Count Basie broadcast from the Savoy Ballroom, but this time we get more in the shape and form of an idiotic announcer!

A portion of this set has been taken up with some extracts from the sound track of the film 'New Orleans' with plenty of Louis Armstrong to be heard. Saga, (ERO 8014) however, issued a much longer extract, containing almost all the jazz pieces and including the wonderful exit from Storyville sequance.

Most fans will have to duplicate a title or two to obtain some of the mysterious tracks but it might be worthwhile. **Billie's Blues**, alone is a gem I would hate to be without. Apart from one track, the recording is quite acceptable. **D.S-B.**

MISSISSIPPI JOHN HURT

VOLUME 1:
Trouble I've Had It All My Days; Papa Lee; See See Rider; Louis Collins; Coffee Blues; Nobody's Dirty Business; Do Lord Remember Me; Monday Morning Blues (21½ min)—Let The Mermaids Flirt With Me; Payday; Stock-O-Lee; Casey Jones; Frankie And Albert (20½ min)

(Piedmont-Legacy CLPS 1068 Import)

Ever since the late John Hurt was rediscovered in 1963 (he died in 1966), this lovely songster has been a favourite with all kinds of music lovers, from the enthusiasts of low-down blues to the fans of folk music in general. His appeal has been universal and breaks down all cultural barriers. John's voice was soft and gentle, like his personality, and once one realised that this man was a law unto himself and sang his songs with no thought of how he sounded, one could enjoy the beauty of his voice and the subtlety of his singing. In short he never tried to sound like a traditional blues singer.

This LP presents some of his most loved songs (**Louis Collins, Coffee Blues** and **Casey Jones**), and some that are not quite so familiar, such as the utterly delightful **Let The Mermaids Flirt With Me**. If I was forced to choose just one track, I think it would be

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RECORD REVIEWS

Hurt's superb version of **Stack-O-Lee**, a most interesting performance lasting over seven minutes and one of the most complete renditions I have ever heard.

All the songs will be familiar to the older collector, so I am addressing my remarks to the younger readers. Once this kind and gentle man gets hold of you, he won't let you go! A very fine release. I look forward to Vol. 2.

D.S-B.

J.A.T.P.

IN TOKYO:
(a) Jab Session Blues; J. C. Heard drum solo (28 min)—Cottontail; Ballad Medley: The Nearness Of You—Someone To Watch Over Me—Flamingo—I Surrender Dear—Sweet And Lovely—Stardust—Embraceable You (29 min)—(b) That Old Black Magic; Tenderly, Blues; Alone Together; Swingin' Till The Girls Come Home (27 min)—(c) Indiana; Cocktails For Two; Don't Be That Way; Stompin' At The Savoy (20 min)—(d) On The Sunny Side Of The Street; Body And Soul; Why Don't You Do Right?; Lady Be Good; I Got It Bad And That Ain't Good; How High The Moon (20 min) —My Funny Valentine; Smooth Sailin'; Frim Fram Sauce; (e) Perdido (16 min)

(a) JATP All Stars: Roy Eldridge, Charlie Shavers (tpt); Bill Harris (tbn); Willie Smith, Benny Carter (alt); Ben Webster, Flip Phillips (ten); Oscar Peterson (pno); Herb Ellis (gtr); Ray Brown (bs); J. C. Heard (dm). Tokyo 18/11/53.
(b) Oscar Peterson Trio: Peterson (pno); Brown (bs); Ellis (gtr). Same date.
(c) Gene Krupa Trio: Krupa (dm); Carter (alt); Peterson (pno). Same date.
(d) Ella Fitzgerald (vcl) acc. Raymond Tunia (pno); Ellis (gtr); Brown (bs); Heard (dm). Same date.
(e) as (a) plus Ella Fitzgerald (vcl).

(Verve 2660 112 3 LP Set £5.99)

As fine a historical representation of the advantages and otherwise of JATP as one could wish for, this runs for almost two and a half hours. Cliches? Peterson relaying the muscular phrases of **Tenderly**, Ella still bound at this time by the hip scat phrases of **Lady and Smooth Sailing'**, and the continuing way in which Krupa splits Benny Carter's infinitives—a fine example of 'name' headlining producing illogical partnering. The jam sessions have to be taken at face value. Webster never succeeded at JATP blues tempi, and it's Flip who's at home here. Predictably the ballads are best, but that is not to conclude that the shoutups are worthless. JATP has its own culture, and the sterling worth and unpredictable nature of Harris' playing hasn't faded over the years. It is also, in 1975, easy to look with a loving eye on Shavers and Eldridge, both guilty of excesses which at the time might not have been forgiven. Peterson's trio here was to me his best—everyone has their own favourites. Its performance on the (b) tracks is tremendous with material, **Tenderly** apart, of a pleasing freshness. There seem to be so few Carter albums that one welcomes any chance to hear him. Here he remains urbane, unruffled and not tremendously inspired. Ella was riding high at this time, and the exuberant confidence of her set communicates easily off the record. This is the second 'new' JATP set (the other was the 1955 Stockholm set) and they are most welcome, but I hope Verve will not pass up the chance to re-release some earlier volumes. Recommended.

S.V.

HARRY JAMES

AND HIS MUSIC MAKERS, 1945-49:
King Porter Stomp; It's The Talk Of The Town; Eight Bar Riff; Air Mail Special (19 min)—Six, Two And Even; Snooty Fruity; Kerina; Blue Beard Blues; 'Cept February Which Has 28; Block Party; There They Go (Tiny's Blues) (18½ min)

Side 1: James, Red Berkan, James Campbell, James Grimes, Jim Troutman (tpt); Vic Hamann, Juan Tizol, Ray Heath, Chuck Preble (tbn); Eddie Rosa, Willie Smith, Corky Corcoran, Stewart Bruner, George Davis (reeds); Arnold Ross (pno); Hayden Causey (gtr); Ed Mihelich (bs); Ray Toland (dm); strings added on 'Talk Of The Town'. Tracks 1, 2 & 3 recorded at the Casino Gardens Ballroom, Ocean Park Calif. on 21, 23 & 29/9/45 respectively. Track 4 recorded at the Meadowbrook Gardens Ballroom, Culver City, Calif. 16/3/46.
Side 2: Composite personnel over an 18-month period from February 1948. James, Nick Buono, Pinky Savitt, Ralph Osbourne, Everett MacDonald, Gene Komer, Neal Hefti (tpt); Juan Tizol, Carl 'Ziggy' Elmer, Chuck Preble, Dave Robbins (tbn); Willie Smith, Eddie Rosa, Corky Corcoran, Jimmy Cook, Bob Poland, Al Pelligrino (reeds); Bruce MacDonald (pno); Alla Reuss, Hilmer Timbrell (gtr); Joe Mondragon (bs); Don Lamond, Frank Bode (dm). Recorded in Hollywood, Calif.

(First Heard 9 £2.85)

I've never heard better big band jazz from Harry James than here. I don't know where First Heard find their music—all their issues so far have been new to me, and this one is no exception. It continues their tradition of proving that the mid '40s were amongst the classic years of big band music. There is an absolute minimum of commercial tracks, Hefti's **Kerina** is the only one which possibly might fit that description, and all the others have a big shouting band with its soloists on top form and some of the most muscular brass sections you'll ever hear. James himself of course is the trumpeter's Charles Atlas, and he solos powerfully on every track except Cork's marvellous **Talk Of The Town**. I've never heard Corcoran play as well, and Willie Smith comes wailing out to solo on nine of the eleven titles. The Basie touch is very prevalent even this early (listen to **Six, Two And Even**) and I'm sure that more than **Kerina** the only one identified, are arranged by Hefti. The writing for reeds and brass is splendid everywhere, with Harry bursting through with his usual eloquent, fiery and generally amazing trumpet! I hope he won't mind foregoing any royalties for the pleasure we are all going to get from this fine set.

S.V.

LEE KONITZ

MOTION:
I Remember You; All Of Me; Foolin' Myself (18¾ min)—You'd Be So Nice To Come Home To; I'll Remember April (18¾ min)

Lee Konitz (alt); Sonny Dallas (bs); Elvin Jones (dm). NYC. 29/8/61.

(Verve Select 2317 106 £2.29)

This is a real collector's item. It was never issued here when originally recorded, and as far as I am aware, this is the first time it has been issued anywhere in stereo (all but **You'd Be So Nice**, which for some reason is in mono). It was recorded at a time when Konitz wasn't working often; it was two years since his last recording session and six years before his next one (the startlingly different Duets on Milestone) and Elvin Jones was hardly the sort of drummer he was used to—virtually all those on his earlier albums simply played straight rhythm. It would be interesting to know what order the tracks were recorded in—one would suspect that it is much as on the record. Despite the eulogies of annotator Brian Davis, I find **I Remember You** and **All Of Me** rather hesitant and disappointing. **Foolin' Myself** on the other hand is played at Konitz' favourite tempo—a swinging slow medium, and he sounds much more relaxed. The two tracks on the second side are both long and fast, with Konitz in good but not outstanding form. The combination of an unsuitable drummer (Konitz' first choice for the session was Max Roach) and perhaps some rustiness on Konitz' part adds up to a less than totally satisfying album, but should be bought and played occasionally to remind us all that even Konitz has his fallible moments!

M.S.

LADNIER-MEZZROW-BECHET

THE PANASSIE SESSIONS (1938):
(a) Revolutionary Blues; Comin' On With The Come On, Parts 1 & 2; (b) Ja- Da; Really The Blues; When You An I Were Young Maggie; Weary Blues; (c) Royal Garden Blues (21 min)—Royal Garden Blues; Everybody Loves My Baby (2 takes) Ain't Gonna Give Nobody None Of My Jelly Roll (2 takes); If You See Me Comin' (2 takes); Gettin' Together (2 takes) (24½ min)

(a) Milton 'Mezz' Mezzrow and Orch: Tommy Ladnier, Sidney de Paris (tpt); Mezz Mezzrow (clt); James P. Johnson (pno); Teddy Bunn (gtr); Elmer James (bs); Zutty Singleton (dm). NYC. 21/11/38.
(b) Tommy Ladnier and Orch: Tommy Ladnier (tpt); Sidney Bechet (ss/clt); Mezz Mezzrow (ts/clt); Cliff Jackson (pno); Teddy Bunn (gtr); Elmer James (bs); Manzie Johnson (dm). NYC. 28/11/38.
(c) Mezzrow-Ladnier Quintet: Tommy Ladnier (tpt); Mezz Mezzrow (clt); Teddy Bunn (gtr); Pops Foster (bs); Manzie Johnson (dm). NYC. 19/12/38.

(RCA B&W FXM 1 7132 £2.50)

These are famous, not to say classic recordings, and it is good to have them back properly organized and presented. They include the alternative takes which were never issued on 78s although one or two at least were included on later LP reissues, notably HMV DLP 1110 where the second masters only of **Really The Blues** and **Weary Blues** appeared. But here we have the lot, five with their alternative masters, so we can judge for ourselves. Of course this is superb music, all through. Sidney Bechet in fact only appears on the four (b) tracks (where he is magnificent), but Tommy Ladnier and Mezz Mezzrow are in partnership on every one, and splendidly they hit it off. Mezzrow, a dedicated but modestly gifted jazz player, invariably worked in superior company which increased his own stature—unlike some (Teagarden or Bix for example) who too often reversed the process and kept bad musical company, to their personal disadvantage. Ladnier, who died at the age of 39 shortly after Hugues Panassié had brought him back into jazz to make these records, was a unique and very special trumpet player; his crisp economical, essentially unsophisticated style matched both Mezzrow's and Bechet's remarkably well, in different ways. The (c) tracks have the special advantage of Pops Foster on bass. He always seemed to put the beat into the blood and the bones as he does here and good though Elmer James is, Foster is something else. James P. Johnson is present on the (a) sides, but isn't really heard to much advantage: Teddy Bunn, however, is. As I say, great jazz, admirably transferred and set out for our permanent pleasure.

B.J.

SABBY LEWIS

BOSTON BOUNCE:
(a) Boston Bounce; Edna; (b) Bottoms Up; Hangover; I Can't Give You Anything But Love; Minor Mania; (c) Embraceable You; Boston Bounce (22 min)—(d) Sweet Georgia Brown; I Surrender Dear; Undecided (24½ min)

(a) Eugene Caines (tpt); Maceo Bryant (tpt/tbn); Jimmy Tyler (alt); Paul Gonsalves (ten); Bill Dorsey (bari); Sabby Lewis (pno); Al Morgan (bs); Eddie Feggans (dm). NYC. 1946.
(b) as (a) except Tyler also plays ten; Dan Turner (ten); Joe Booker (dm) replace Gonsalves, Feggans. NYC. 1947.
(c) 13-piece bar 1 with Freddie Webster (tpt); Evelyn White (vcl). Club Zanzibar, NYC. 29/3/44.
(d) Big Nick Nicholas, Jerry Heffron (ten); Ray Perry (vln); Sabby Lewis (pno); Al

EXHIBIT C - COPY OF SMG PURCHASE ORDER

588a

RECORDS
TAPES
ACCESSORIES

SMG

DISTRIBUTORS, INC.
46 - 50 54TH AVENUE
MASPETH, NEW YORK 11378

No 6380

DATE 7/16 1975

TERMS

ORDERED FROM Adelphi

ADDRESS

SHIP VIA _____ PPD ☐ COLLECT ☐

RELEASE NO.

RECORD/TAPE NO.	QUANTITY	UNIT PRICE		RECORD/TAPE NO.	QUANTITY	UNIT PRICE		RECORD/TAPE NO.	QUANTITY	UNIT PRICE
1004	10		23				45			
8	10		24				46			
17	10		25				47			
4101	10		26				48			
13157	10		27				49			
61	10		28				50			
			29				51			
			30				52			
PIEDMONT			31				53			
1068	100		32				54			
			33				55			
			34				56			
SKYLINE			35				57			
DD101	50		36				58			
			37				59			
			38				60			
			39				61			
			40				62			
			41				63			
			42				64			
			43				65			
			44				66			

IMPORTANT

OUR ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, ETC.

COUNTERSIGNED

PURCHASING AGENT

EXHIBIT D - COPY OF INVOICE

RECORDS INC
P.O. Box 238
[illegible] MD 20707
(301) 270-9440

INVOICE NO. 2005

TERMS: net 60 days; no disc's

CUSTOMER'S ORDER NO. 6300

DATE SHIPPED 7-23-75

SHIPPED VIA UPS

F[illegible] but not shipped will be back ordered [illegible] as specified. All breakage and shortages [illegible] noted in writing within 5 days. Written [illegible] required before returning any item.

RETAIL — LICENSE NO. _____ STATE _____

SOLD TO:

[illegible] Distributors
[illegible]-33 54th Rd.
Maspeth, N.Y. 11378

SHIPPED TO:

SMD
46-50 54th Ave.
Maspeth, N.Y. 11378

QUANTITY ORDERED	QUANTITY SHIPPED		UNIT COST	TOTAL COST
10	[illegible]	Adelphi 1004		
10	10	1008	2.85	23.50
10	[illegible]	1017		
10	10	4101	2.85	[illegible]
10	10	Piedmont 13157	2.85	[illegible]
10	10	13161	2.85	[illegible]
100	100	1068	2.85	[illegible]
50	[illegible]	Skylife 101		
25	25	CIPS 1068 promotional copies attn: Juggy Gayles		

Total lps shipped: 140 and 25 no cost
Total Amount Due: $399.00
-47.01 credit bal. outstanding
$351.99 TOTAL AMT. DUE

Records
JR

INVOICE

AFFIDAVIT OF JOHN A. VASSALLO IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant and Third-Party Plaintiff, -against- HERB GART, d/b/a HERB GART MANAGEMENT, INC., Third-Party Defendant.	AFFIDAVIT 73 Civ. 394 (C.L.B., Jr.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN A. VASSALLO, being duly sworn, says:

1. I am a member of Kurtz & Vassallo, P.C., attorneys for defendant, Vanguard Recording Society, Inc. I make this affidavit in support of defendant's motion for a new trial pursuant to Rule 60(b)(2) and (3) of the Federal Rules of Civil Procedure. This motion is sought to be brought on by order to show cause so as to permit its consideration on February 3, 1976, the date which this Court has fixed for conference between the parties.

2. On January 15, 1976, Maynard Solomon informed me of his telephone conversations with John Irvine, described in his accompanying affidavit.

3. In the afternoon of the same day, I telephoned Mr. Irvine in Toronto and arranged with him to interview him by telephone the following day.

4. On the following day, January 16, 1976, my colleague, Bruno Schachner, and I spoke with Mr. Irvine for approximately one-half hour in a three way telephone conversation. The call was made from my office to Mr. Irvine's office at radio station CKFH in Toronto.

5. In that telephone conversation, Mr. Irvine told Mr. Schachner and me the following facts

6. In 1968, a company owned and operated by Mr. Irvine entered into a written agreement with one Peter Kaikendahl and his company, Windwood Music, under the terms of which Mr. Irvine's company licensed the right to exploit in Canada certain master recordings of the performances of Mississippi John Hurt.

7. Kaikendahl and his company represented to Irvine that they were the lawful owners of the master recordings in question and had legal authority to license their exploitation to Mr. Irvine's company.

8. In the spring of 1975, Irvine received a telephone call from Thomas Hoskins and Eugene Rosenthal, who informed him that they were in Toronto and wished to meet with him for the purpose of discussing Mississippi John Hurt and Mr. Irvine's company's release of recordings of his music in Canada. Mr. Irvine met with Messrs. Hoskins and Rosenthal at their hotel and discussed with them the means by which his company had acquired a license to release Hurt recordings in Canada. Hoskins and Rosenthal told Irvine that Music Research, Inc. had the

exclusive right to exploit Hurt recordings but orally agreed with Irvine that his company could act as the sole distributor in Canada of all their releases of the recordings of John Hurt.

9. In December 1975, one John Norris, whom Irvine described as a man associated with "Coda Publishing", told Irvine that the October 2, 1975 issue of Jazz Journal, a jazz magazine published in Great Britain, contained a review of a Hurt album released under the Piedmont label with the same album title and songs used in an album which Mr. Irvine's company had previously released.

10. Irvine said that he thereafter contacted Almada Records, a Canadian distributor for Piedmont Records. He was told that Almada had received from Adelphi Records, Inc. in September of 1975 or earlier, a Piedmont album entitled "Mississippi John Hurt Volume One of a Legacy". Irvine immediately obtained a copy of that album and found that both the album and the album jacket were identical to that released by his company under its own label, with the exception that the album jacket carried the logo "Piedmont-Legacy" and contained the following endorsement:

> Produced by Music Research, Inc.,
> producers of Piedmont and Bullfrog records.
> For a free catalog of albums of related
> interest, please write to:
>
> Music Research, Inc.
> P. O. Box 288
> Silver Spring, Md. 20907.

11. Irvine said that immediately thereafter -- about a week before Christmas 1975 -- he telephoned Eugene Rosenthal and informed him that he considered Piedmont's release through Adelphi

of the subject album to be a breach of their understanding made in the spring of 1975. At first, Rosenthal denied that Music Research or Adelphi had released a Hurt album, but when Irvine told Rosenthal that he held a copy of the album in his hand, Rosenthal admitted that his denial was not true. He said that the album had been released by Mr. Hoskins' company, and that Adelphi was distributing it for Music Research. Rosenthal also said that he had advised Hoskins against releasing the album.

12. Irvine said that he told Rosenthal that Rosenthal should arrange for Hoskins to contact him immediately.

13. Irvine stated that two days later he received a telephone call from Hoskins, who also admitted that Music Research had released the "Mississippi John Hurt Volume One of a Legacy" album.

14. Irvine stated that about midnight on January 12 or 13, 1976, Hoskins telephoned him again and requested that Irvine not tell anyone about the Piedmont release of the "Mississippi John Hurt Volume One of a Legacy" album. Hoskins asked that Irvine telephone William Powell, his attorney, to discuss the matter further.

15. Irvine stated that he telephoned Mr. Powell on the following day and that in that telephone conversation Mr. Powell stated that he had no prior knowledge that Music Research or Adelphi had released the Hurt album in question. Powell also said that he had advised Hoskins that it was not a good idea to release the album at that time.

16. Irvine stated that he telephoned Maynard Solomon on January 14, 1976 and told him what had happened, asking that Solomon inform Irvine of the status of this case. Irvine stated that he contacted Solomon in the hope that Vanguard and its attorneys might cooperate to protect what Irvine considered his company's contractual rights to distribute Hurt recordings in Canada.

17. Irvine stated that in their telephone conversation on January 14, 1976, Maynard Solomon asked him to give him the date of the Jazz Journal issue which reviewed the Piedmont release and that Irvine mistakenly gave him the wrong issue.

18. Irvine said that on the following day, January 15, 1976, Solomon telephoned him to explain that he could not find the review of the album in the issue of Jazz Journal which Irvine had mentioned, and that Irvine then gave him the correct issue date (October 2, 1975). Solomon asked whether he would be willing to discuss what he had told Solomon with me and Irvine told Solomon that he very much wanted to for the reason that he considered plaintiffs' actions a breach of their agreement with him, as well as an infringement of his rights in that the Piedmont album was simply a reproduction of the album and album jacket released by his company in Canada.

19. During this conversation, both my associate, Bruno Schachner, and I asked Mr. Irvine whether he would be willing to visit in New York for the purpose of making an affidavit reciting what he told us for use in this case. Mr. Irvine said that he

would do so and asked whether we would review his contract with Kaikendahl's company and advise him concerning his legal rights.

20. Mr. Schachner and I explained to Mr. Irvine that while we could not undertake to represent his company and while we did not know that the law of New York would have any pertinence in any event, we would discuss that contract with him on his visit to New York.

21. Mr. Irvine agreed to meet Mr. Schachner and me at my office at 5:00 P.M. on Monday, January 19, 1976.

22. In the early afternoon of that day, I telephoned Mr. Irvine at radio station CKFH and confirmed our meeting for 5:00 P.M. that day.

23. However, Mr. Irvine did not keep our appointment. Nor did he call to explain his non-appearance although Mr. Schachner and I waited for him until approximately 11:00 P.M. During the evening we telephoned radio station CKFH and a gentleman there, while explaining that he could not furnish us with Mr. Irvine's home telephone number, did telephone that number and told us that he got no answer. Mr. Schachner and I also had Mr. Irvine paged, without success, at New York airports at the time of scheduled arrival flights from Toronto, Canada.

24. On Tuesday, January 20th and Wednesday, January 21st, I telephoned Mr. Irvine at radio station CKFH on more than a dozen occasions. Some telephone calls were made station-to-station and others person-to-person.

25. On Tuesday, each time that I called I was told that Mr. Irvine had not been at the radio station that day. On one occasion, a woman, to whom my call was referred, explained

that he was "out-of-town". On Wednesday, I was told that Mr. Irvine was at the radio station but he neither took my calls nor returned any of them although I left messages requesting that he do so.

26. The next day, Thursday, January 22nd, Maynard Solomon received a telegram from Irvine (a copy of which is annexed as Exhibit A hereto) stating:

> "Have been advised not to enter U.S.A. until my legal position is clear. Please send complete details of your case with Hoskins and MJH [Mississippi John Hurt]."

27. Mr. Solomon wired Mr. Irvine the following response:

> "Complete details of Vanguard and Hoskins lawsuit can be obtained from our attorney John Vassallo who has been trying unsuccessfully to reach you by phone for three days."

28. However, neither I nor Mr. Solomon have received any response to that telegram or heard anything further from Mr. Irvine.

JOHN A. VASSALLO

Sworn to before me this
23rd day of January, 1976.

Notary Public
RICHARD A. ADAMS
Notary Public, State of New York
No. 31-0[illegible]-21
Qualified in New York County
Term Expires March 30, 19[illegible]

western union Telegram

EXHIBIT A - COPIES OF TELEGRAM
AND MAILGRAM ANNEXED TO FOREGOING AFFIDAVIT

597a

DC0240(2128)(1-037055B021-B01)PD 01/21/76 1721

2557732

ICS IPMNYND NYK
ICS IPMNYND NYK
RETRIEVAL REPLY: 1-178332GJ21 NYD 360 ICS IPMIIRA IISE
IISE FM CNT 21 1721
PMS NEW YORK NY

FH

BT
CN32382 TSAL060 24 FR
UQNY
CRT TORONTO ONT 1-21 520P EST
MENARD SOLOMON VANGUARD RECORDS
71 WEST 23RD ST NEW YORK NY 10010
ST
HAVE BEEN ADVISED NOT TO ENTER U.S.A UNTIL MY LEGAL POSITION IS
CLEAR PLEASE SEND COMPLETE DETAILS OF YOUR CASE WITH HOSKINS AND MJH

SF-1201 (R5-69)

western union Telegram

JOHN IRVINE.
NNN
NNNN

BEST COPY AVAILABLE

MGMNYBT HSB
2-00[illegible]5123022002 01/22/76
ICS IPMCTZZ CSP
1 2122557732 MGM TDMT NEW YORK NY 01-22 1021A EST

western union Mailgram®

UNITED STATES POSTAL SERVICE

598a

VANGUARD RECORDING SOCIETY JO INGUANTI
71 WEST 23 ST
NEW YORK NY 10010

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2122557732 TDMT NEW YORK NY 29 01-22 1021A EST
PMS JOHN IRVINE
1 GRENVILLE ST
TORONTO ON CAN
COMPLETE DETAILS OF VANGUARD AND HOSKINS LAW SUIT CAN BE OBTAINED
FROM OUR ATTORNEY JOHN VASSALLO WHO HAS BEEN TRYING UNSUCCESSFULLY
TO REACH YOU BY PHONE FOR THREE DAYS
MAYNARD SOLOMON

10:21 EST

MGMNYBT HSB

AFFIDAVIT OF BRUNO SCHACHNER IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant and Third-Party Plaintiff, -against- HERB GART, d/b/a HERB GART MANAGEMENT INC., Third-Party Defendant.	AFFIDAVIT 73 Civ. 394 (C.L.B., Jr.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

BRUNO SCHACHNER, being duly sworn, says:

1. I am a member of the Bar of this Court and I am representing defendant in this action in association with Kurtz & Vassallo, P.C.

2. I have read the accompanying affidavit of John A. Vassallo. It sets forth accurately the substance of our telephone conversation with John Irvine on January 16, 1976.

3. I was also with Mr. Vassallo from 5:00 P.M. until 11:00 P.M. on Monday, January 19th awaiting Mr. Irvine, who had agreed to meet with us at that time, to give an affidavit setting

forth wha[illegible]e told us by phone.

4. Mr. Vassallo's affidavit accurately describes the events of that evening.

BRUNO SCHACHNER

Sworn to before me this
[illegible] day of January, 1975.

Notary Public

AFFIDAVIT OF ROBERT B. DAVIDSON IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant & Third-Party Plaintiff, -against- HERB GART, d/b/a/ HERB GART MANAGEMENT, INC., Third-Party Defendant.	:	73 Civ. 394 (C.L.B.) AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT B. DAVIDSON, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York and of this Court and am associated with Baker & McKenzie, attorneys for the plaintiffs herein.

2. I make this affidavit in opposition to the defendant's motion for a new trial pursuant to F.R.C.P. Rule 60(b)(2) and (3).

3. Defendant's papers allege two grounds for a new trial: (i) newly discovered evidence "which would have been sufficient to change the outcome of the trial"; and (ii) plaintiffs' alleged misconduct at trial. (Order to Show Cause dated January 30, 1976).

Newly Discovered Evidence

4. As explained in the plaintiffs' accompanying Memorandum

of Law submitted in opposition to Vanguard's motion, evidence sufficient to warrant a new trial must be of such a material and controlling nature as will probably change the outcome of the trial. Vanguard's "new evidence" does not fulfill this qualification.

5. In the first instance, the claim that Piedmont released a John Hurt album in 1975 ("the Album"), even if true, has no relevance whatsoever to the issue of liability which involved events all occurring prior to 1966, the year of Hurt's death. (Tr. 40). Second, the existence of the Album is in no way inconsistent with any of the testimony at trial or with the verdict. All its existence would arguably tend to prove is that the vault tapes (which presumably contain music similar to that appearing on the Album) have some residual market value despite Vanguard's release of its third and fourth albums. But both Hoskins and Rosenthal admitted that fact at trial. As Hoskins testified at Tr. 200:

> "Q. So what you have referred to as worthless tapes have some market value, don't they?*
>
> A. Yes," (See also, Hoskins' statement at Tr. 194)

As Rosenthal testified at Tr. 264-265:

> "Q. Do you have an opinion with respect to the value of the vault tapes today?
>
> A. Yes, I do.
>
> Q. What is that?
>
> A. Maybe five to ten thousand dollars."

---

*Concagh's characterization of Hoskins' testimony (that the tapes were "worthless") never appears in Hoskins' trial testimony. Indeed, Hoskins testified directly the opposite. (Tr. 194).

Indeed, as explained in ¶8 of the affidavit of Eugene R. Rosenthal, sworn to on February 18, 1976 ("the Rosenthal affidavit", annexed hereto as Exhibit A), the income from the sale of the Album is well below the $5,000 to $10,000 of total salvage value expectation expressed at trial.

6. Furthermore, F.R.C.P. Rule 60(b)(2) only authorizes relief for "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under 59(b)" (F.R.C.P. Rule 60(b)(2) (emphasis supplied)). The time to move for a new trial in this action expired on November 20, 1975, ten days after entry of the judgment. Thus, unless Vanguard demonstrates that its "newly discovered evidence" was not discoverable by that date (not whether it was in fact discovered), its motion on this ground must fail. As attested in ¶8 of the affidavit of Maynard Solomon, sworn to on January 29, 1975 ("the Solomon affidavit"), the Album was reviewed in the October 2, 1975 issue of Jazz Journal "[w]eeks prior to the trial of this action, . . . " Paragraph 9 of that same affidavit states that the Album was available in England prior to the trial. In paragraph 10 of his affidavit, Solomon admits that the Album "was released in New York in July of 1975 -- several months before the trial of this action." (emphasis supplied). See also, ¶6 and Exhibit 3 at page 4 of the Rosenthal affidavit which demonstrates that Vanguard probably received written notice of the Album's existence prior to trial. Surely, Vanguard cannot now be heard to argue that a record openly selling in New York City record shops since July of 1975, and contained in a

September publication which it received could not have been discovered by November 20, 1975 with the exercise of due diligence. In this respect a plaintiff has no affirmative duty to prepare its adversary's case. If Vanguard took the most elementary steps to ascertain the existing state of the market for John Hurt albums (certainly relevant to the plaintiffs' damage claims) it would have discovered the Album, the existence of which it now claims to have been "surpressed" by the plaintiffs. Defendant's claim pursuant to F.R.C.P. Rule 60(b)(2) is specious and should be denied.

Misconduct by the Plaintiffs

7. Defendant also seeks a new trial based on the plaintiffs' alleged "misconduct". In support of its motion it cites three passages in the transcript. The first of these passages relates to testimony given by Tom Hoskins at Tr. 199-200 as follows:

"Q. Mr. Hoskins, was it your present intention in the summer of 1975, to put out a Mississippi John Hurt record album?

A. The summer of '75?

Q. Yes, sir.

A. No.

Q. You had trouble with that question.

A. I'm not sure exactly what you mean.

Q. Don't you intend to put out another Mississippi John Hurt album?

A. I would like to, yes, sir.

Q. So what you have referred to as worthless tapes have some market value, don't they?

A. Yes.

Q. You intend to put out a record album having to do with twenty-five hours contained on this exhibit in evidence don't you, sir?

A. Yes.

MR. CONCAGH: I have no further questions."

4. As the record demonstrates, and as explained in the affidavit of Thomas B. Hoskins, sworn to on February 18, 1976 ("the Hoskins affidavit", annexed hereto as Exhibit B), Hoskins' responses to the questions put to him by Vanguard's counsel were accurate and complete. Mr. Concagh asked whether Hoskins intended to produce a record from the vault tapes. Hoskins answered that he did have that intention. If there be any doubt that Mr. Concagh was referring to a new album to be produced in the future from the vault tapes, it is resolved by the record at Tr. 276. There, Mr. Concagh cross-examined Rosenthal with respect to the same subject matter:

"Q. Have you made any projections on paper about the new album you are going to put out <u>after</u> <u>this</u> <u>lawsuit</u>?

A. What new album?

Q. The new album that Mr. Hoskins discussed on his direct testimony. Weren't you here during his testimony?

A. Yes." [emphasis supplied].

There can be no doubt that the questions asked Hoskins by Vanguard's counsel related to an intent to produce additional records from the vault tapes after the lawsuit. After all, Vanguard was trying to establish that the vault tapes had substantial value today, thus rebutting the claim that

Vanguard's pre-emption of the market had destroyed that value.

9. Defendant's further allegation that Rosenthal gave false testimony concerning this "new album" is also without merit. Rosenthal's response at Tr. 276 must be read in the context of the question asked. As the full record reveals at Tr. 275-276, Mr. Concagh's question related to Rosenthal's awareness of a proposed new album which Hoskins testified he intended to produce from the vault tapes. As Rosenthal explained in ¶10 of his affidavit, he truthfully responded that he had no present awareness of Hoskins' intention.

10. The last bit of testimony relied upon by defendant relates to Mr. Newman's response to the Court at Tr. 61. Counsel for defendant, however, does not quote the entire record in proper context. Annexed hereto as Exhibit C is a copy of Tr. 57-63. An examination of this section of the record demonstrates beyond question that Mr. Newman (and Hoskins and the Court) were all referring to the "period of a year or two following the March date of this agreement, March of 1963, . . . " (Tr. 57, lines 19-20). At Tr. 58, lines 3-4, Hoskins responded that, during the 1963-1965 period, "[w]e also recorded him extensively and produced two LP's of his music." Mr. Newman's later question at Tr. 60-61, lines 25-2 referred to the two Piedmont albums Hoskins mentioned in his prior testimony, namely the two albums produced during the 1963-1965 period. The Court's question to Mr. Newman at Tr. 61, lines 10-11 cited by defendant, related to those very albums.

11. As to William Powell's alleged statement to John Irvine,

annexed hereto as Exhibit D is an affidavit by William J. Powell, sworn to on February 18, 1975. As indicated therein, not only did Mr. Powell not make the statement attributed to him, he specifically advised Irvine that neither he, nor either of the plaintiffs' officers, objected to Irvine's testifying in the matter.

12. In summary, defendant, if it had opened its eyes to all that was about it prior to the trial, would have had the Album in its hand on the date of trial. The defendant could have used due diligence in preparing its case for trial, but it did not. Defendant could have utilized the Court's subpoena power to compel plaintiffs to produce the Album at trial (as plaintiffs did, Tr. 43-44), but it did not. Defendant's counsel could have followed-up a promising line of cross-examination when Hoskins' relationship with Kuykendall was brough forth (Tr. 194-196), but he did not.* Defendant should not, under these circumstances, be permitted to retry a case it has lost after three long days of trial and a jury verdict fully sustained by the evidence. Defendant's Rule 60 motion should be denied in all respects.

Robert B. Davidson
ROBERT B. DAVIDSON

Sworn to before me this
18th day of February, 1976

Notary Public
MICHAEL BURROWS
Notary Public, State of New York
No. 31-4601202
Qualified in New York County
Commission Expires March 30, 1978

*Defendant at least could have examined the Kuykendall tapes he was entitled to see (Tr. 196), but he did not.

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT A - AFFIDAVIT OF EUGENE B. ROSENTHAL IN OPPOSITION TO MOTION ANNEXED TO FOREGOING AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC.,	73 Civ. 394 (C.L.B.)
Plaintiffs,	
-against-	AFFIDAVIT
VANGUARD RECORDING SOCIETY, INC.,	
Defendant & Third-Party Plaintiff,	
-against-	
HERB GART d/b/a HERB GART MANAGEMENT, INC.,	
Third-Party Defendant.	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

EUGENE R. ROSENTHAL, being duly sworn, deposes and says:

1. I am the President of Adelphi Records, Inc., one of the plaintiffs in the above action. I have personal knowledge of the facts stated in this affidavit.

2. I make this affidavit in response to certain allegations made by Vanguard in its attempt to overturn the judgment rendered against it.

3. I have direct personal knowledge of the circumstances within which the Piedmont-Legacy CLPS-1068 LP recording, entitled "Mississippi John Hurt, Volume One of a Legacy," (hereinafter referred to as the Piedmont-Legacy reissue) was produced by Piedmont (Music Research, Inc.) and distributed by Adelphi Records, Inc. The Piedmont-Legacy reissue was simply a duplicate

of an unauthorized recording which appeared on the American market in early 1971. This album was released by a Canadian named John Irvine under a "Legacy" record label in 1968. The music contained in the 1968 release was obtained from master recordings leased to Irvine by Wynwood Music, Inc. of Virginia. Wynwood originally recorded the tapes for Music Research in 1963 and 1964 under an agreement whereby Music Research would retain ownership of the tapes while Wynwood would receive certain publishing rights in return for its recording service. Wynwood converted the tapes by purporting to lease them as the owner to John Irvine.

4. It was not until March of 1975 that, after substantial investigation, Tom Hoskins and I were able to ascertain that the Legacy album was produced from tapes which Wynwood wrongfully converted from Music Research. After obtaining conclusive evidence that Music Research had the sole rights to the music contained in the Legacy album (it also had sole rights to the likeness of John Hurt on the Legacy album cover), Tom Hoskins authorized Adelphi Records to produce and distribute that same album under the Music Research label, Piedmont-Legacy. Submitted as Exhibit 1 is the Legacy album as released by Irvine in Canada in 1968. Submitted as Exhibit 2 is the Piedmont-Legacy album as released by Music Research.

5. Thus, the Piedmont-Legacy album is not an original or "new" album, but is a reissue, identical to the 1968 Legacy release, except for certain labeling and minor cover changes.

6. From July 10, 1975, through the present time, the Piedmont-Legacy album has been widely promoted through the use of promotional copies of the record sent to radio stations, reviewers,

trade publications, and distributors. Among the trade publications to whom promotional copies were sent was "Walrus". In the September 24, 1975, issue of "Walrus" AT PAGE 4 under the heading of "Reissues" the Piedmont-Legacy album is listed directly under a listing of the Vanguard Larry Coryell album, "The Essential," VSD-75/76, and these are the first two listings under that caption. That issue of "Walrus" is attached hereto as Exhibit 3. Since the only way that a listing in "Walrus" can appear is for the producer of the record to send a promotional copy to them, and since "Walrus" automatically sends a copy of its publication to all producers who have records listed, it must therefore be concluded that Vanguard not only sent a promotional copy of its Larry Coryell record to them, but also received a copy of the issue listing it in September, 1975, before the trial of this case.

7. The Piedmont-Legacy album was also widely available in record stores in New York City as early as August, 1975. See distributor's invoices attached hereto as Exhibit 4. The record was also on the shelves for sale at King Karol and the Sam Goody stores in New York City.

8. Our distribution of the Piedmont-Legacy album is not inconsistent with any of the testimony at trial. At the trial, I testified that the vault tapes had a salvage value of from $5,000 to $10,000 (Tr. 264-265). Indeed, the sales figures for the Piedmont-Legacy album prove that my initial estimate was optimistic. By the time of the trial, after having been on the market for about four months, the Piedmont-Legacy album had not broken even, sales having been of fewer than 1,000 pieces, and this in spite of considerable promotion, good reviews, and wide availability. As of February 10, 1976, sales of the album had

considerably fallen off, having peaked by November, 1975. The total profit on the album as of February 10, 1976 was only $708.00, and this figure does not include any deduction from gross sales for studio time expended in editing, dubbing, sequencing, or leadering the master tapes in preparation for making the lacquer masters. Time expended on those services was approximately eight hours which when multiplied by our studio's normal hourly charge of $25.00 per hour, becomes a $200.00 additional cost leaving a profit of $508.00.

9. This small profit was made possible because it was relatively inexpensive for us to simply reproduce an album, rather than create one from scratch (especially with regard to the album cover and artwork expenses).

10. Vanguard has also made certain allegations with respect to my trial testimony. Specifically, Vanguard's attorneys quote half a page of the trial transcript at page 277 but conveniently neglect to cite to the Court the part of the record which would place my answer in proper context. As the record proves, Mr. Concagh asked whether I was aware of a new Mississippi John Hurt album which Hoskins was planning to produce from the vault tapes after the lawsuit. I answered truthfully and completely that I was not aware of any such new album.

11. Vanguard's allegation that, after the trial, I tried to keep the existence of the Piedmont-Legacy recording from Maynard Solomon is absurd on its face. It would be rather ridiculous for me to try to conceal the existence of a recording selling in New York retail outlets since July. I attempted no such concealment. I did tell Mr. Irvine that Adelphi did not release the Piedmont-

Legacy album but only distributed it, and that Music Research released it.

12. Vanguard, at page 9 of its supporting Memorandum, also implies that Exhibit 91 is inconsistent with my current distributors' selling price of $2.85. There is no inconsistency. The figures presented in the documents prepared for trial related to costs and prices prevailing in 1970 and 1971, which prices and costs were different from those prevailing today. For example, in 1970 our record pressing costs were $.30-.32 per LP. Today our cost is $.40-.43 per LP. In 1970 our printing costs for covers were $35 per thousand. In 1973 they increased to $39 per thousand. In 1976 they went up again to $41 per thousand. In 1970 Jacket Fabrication costs were $.055 per jacket. In 1974 Jacket Fabrication costs rose to $.065 per jacket. Mailing costs have also increased during this period by 100%. All of these increased costs have brought about an industry-wide increase in manufacturers suggested selling price, from 1970's suggested list of $5.95 per LP to a 1975/76 manufacturers suggested list of $6.95. A similar increase was reflected in the wholesale selling prices.

13. Mr. Hoskins and I brought a copy of the Piedmont-Legacy album with us to Court at the time of trial in the hope that we could get it into evidence to corroborate the vault tape salvage value testimony. However, the Court ruled early in the trial (Tr. 50) that no exhibits would be taken which had not been listed

in the May pretrial order. The album did not exist until July, 1975.

Eugene R. Rosenthal
EUGENE R. ROSENTHAL

Sworn to before me this
18th day of February, 1976.

Robert B. Davidson
Notary Public

ROBERT B. DAVIDSON
Notary Public, State of New York
No. 31-4500636
Qualified in New York County
Commission Expires March 30, 1977

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

MISSISSIPPI
JOHN HURT
VOLUME ONE OF A LEGACY

Mississippi John Hurt

LEGACY CLPS 1068

SIDE 1:

1. Trouble, I've Had It All My Days 2:40
2. Pera Lee 1:30
3. See See Rider 3:27
4. Louis Collins 1:53
5. Coffee Blues 2:50
6. Nobody's Dirty Business 2:27
7. Do Lord Remember Me (P.D.) 1:48
8. Monday Morning Blues 5:15

Total 21:50

SIDE 2:

1. Let The Mermaids Flirt With Me 2:25
2. Payday 2:55
3. Stack-O-Lee (arr. Hurt) 7:15
4. Casey Jones 3:00
5. Frankie And Albert 5:00

Total 20:35

THIS ALBUM IS VOLUME 1 OF A 3 VOLUME SET CONTAINING THE LAST REMAINING LEGACY OF MISSISSIPPI JOHN HURT

Album cover drawing by Allan McKinnon.

Produced in Canada by Rebel Records of Canada.

All selections published by Wynwood Music 'Rereco/Zap. (B.M.I.)

All selections written and arranged by Mississippi John Hurt.

COMPATIBLE STEREO

Manufactured and distributed by LEGACY Records, Box 32, Willowdale, Ontario.

To say that Mississippi John Hurt was a great artist is an understatement. Not only because he was a compelling performer and an excellent technical master of his instrument, but in the way that very few entertainers can be described as humble, quiet, amazing and magnetic.

His first breath of life occured in 1892 in the small town of Teoc, Mississippi in the heart of the Delta country John's whole life was centered around that area in almost every type of job except playing his compelling music professionally. He worked primarily as a farm laborer, picking cotton and corn and herding cows while playing music for local gatherings, parties, friends and his own amusement. His first small measure of fame and fortune came about by chance in 1928 when Okeh recording director T.G. Rockwell auditioning in the Mississippi area asked Guitarist and fiddler Narmour and Smith of any other good musicians in the area. John Hurt's name was the first mentioned. After hearing John, Mr. Rockwell asked him to come to Memphis to record for Okeh. On Valentine's day of 1928 John Hurt journeyed to Memphis to start on his first short trip to musical notoriety which lasted for two more recording sessions in December of that year in New York city. John's greatness had been captured first for the public via phonograph records. But with the depression of 1929 affecting the record business very harshly, Okeh was one of the first to succumb. John forgot about the professional world of records and returned to the small world of the Mississippi Delta. John's greatness however was not stilled but only delayed. In 1963 while on a Mississippi trip, blues collector Tom Hoskins remembered one of the lines from John's 1928 recordings..."Avalon's My Home Town, always on my mind" and seeing Avalon, Mississippi on a map set off on a freak hunch that the now legendary John Hurt might still be around. One stop at the general store in Avalon and John Hurt's greatness was rediscovered after 35 years in waiting.

From then the world learned about John Hurt's musical ability, his songs, his humbleness and compelling humour. With appearances at the Newport Folk Festival's of 1963 and 1964, on the Network TV "Tonight" show, many universities and colleges throughout the U.S. and Canada.

John journeyed back to his home area of Mississippi to live and there is where his story now has ended. However his music will never again be forgotten by the many thousands who heard him again through records and remember seeing him perform. As John himself once said, "I know it and I been knowing it" Now we know it and are so much better for it.....Amen!

J. Evans

MADE IN CANADA

EXHIBIT 2 - PIEDMONT LEGACY ALBUM AS RELEASED BY MUSIC RESEARCH

EXHIBIT 2 - PIEDMONT LEGACY ALBUM AS RELEASED BY MUSIC RESEARCH

617a

Piedmont-Legacy CLPS 1068

Mississippi John Hurt

SIDE 1:

1. Trouble, I've Had It All My Days 2:40
2. Pete Lee 1:30
3. See See Rider 3:27
4. Louis Collins 1:53
5. Coffee Blues 2:50
6. Nobody's Dirty Business 2:27
7. Do Lord Remember Me (P.D.) 1:48
8. Monday Morning Blues 5:15

Total 21:50

SIDE 2:

1. Let The Mermaids Flirt With Me 2:25
2. Payday 2:55
3. Stack-O-Lee (arr. Hurt) 7:15
4. Casey Jones 3:00
5. Frankie And Albert 5:00

Total 20:35

All titles copyright © 1975 by Mississippi John Hurt-Music Research, Inc.

Album cover drawing by Allen McKinnon.

Produced by Music Research, Inc., producers of Piedmont and Bullfrog records. For a free catalog of albums of related interest, please write to:
Music Research, Inc.
P.O. Box 288
Silver Spring, MD 20907

℗ 1975 Piedmont Records

To say that Mississippi John Hurt was a great artist is an understatement. Not only because he was a compelling performer and an excellent technical master of his instrument, but in the way that very few entertainers can be described as humble, quiet, amazing and magnetic.

His first breath of life occured in 1892 in the small town of Teoc, Mississippi in the heart of the Delta country. John's whole life was centered around that area in almost every type of job except playing his compelling music professionally. He worked primarily as a farm laborer, picking cotton and corn and herding cows while playing music for local gatherings, parties, friends and his own amusement. His first small measure of fame and fortune came about by chance in 1928 when Okeh recording director T.C. Rockwell auditioning in the Mississippi area asked Guitarist and fiddler Narmour and Smith of any other good musicians in the area. John Hurt's name was the first mentioned. After hearing John, Mr. Rockwell asked him to come to Memphis to record for Okeh.

On Valentine's day of 1928 John Hurt journeyed to Memphis to start on his first short trip to musical notoriety which lasted for two more recording sessions in December of that year in New York city. John's greatness had been captured first for the public via phonograph records. But with the depression of 1929 affecting the record business very harshly, Okeh was one of the first to succumb. John forgot about the professional world of records and returned to the small world of the Mississippi Delta. John's greatness however was not stilled but only delayed. In 1963 while on a Mississippi trip, blues collector Tom Hoskins remembered one of the lines from John's 1928 recordings..."Avalon's My Home Town, always on my mind" and locating Avalon, Mississippi on a map set off on a freak hunch that the now legendary John Hurt might still be around. One stop at the general store in Avalon and John Hurt's greatness was rediscovered after 35 years in waiting.

From then the world learned about John Hurt's musical ability, his songs, his humbleness and compelling humour. With appearances at the Newport Folk Festival's of 1963 and 1964, on the Network TV "Tonight" show, many universities and colleges throughout the U.S. and Canada.

John journeyed back to his home area of Mississippi to live and there is where his story now has ended. However his music will never again be forgotten by the many thousands who heard him again through records and remember seeing him perform. As John himself once said, "I know it and I been knowing it" Now we know it and are so much better for it.....Amen!

J. Evans

BEST COPY AVAILABLE

...(CONTINUED)

...(Have the [illegible] ...[illegible] ...[illegible] ...[

6194

EXHIBIT 4 — DISTRIBUTOR'S INVOICES

RECORD PEOPLE

32 ST. MARK'S PLACE
NEW YORK, N.Y., 10003
(212) 673-2988

INVOICE NO. 460

PICKED BY	CHECKED BY	PACKED BY	NO. PKGS.
NC	S.V.	JM	1

SOLD TO: Discount Records
34 C. 8 St.
NYC

SHIP TO:

Customer's Order No. 1051 Store No. 190 Department

ORDER NO.	DATE SHIPPED	TERMS	F.O.B.	INVOICE DATE	SHIP VIA	SALESMAN
	8/4/75			8/4/75	SR6	

QUANT. ORD.	QUANT. SHIP	DESCRIPTION	BACK ORD.
3	00		
		COUNT	
735			
	1	1028	
HERW	1	5008	
282		BAY	
JA	1	201	
W	1	BIRTH	
23	1	8	
JOICE	1	V7	
2173	1	23	
4015		BL. CLA	
HOWLS	1	1	
3804	1	8	
MORN	1	25	
4500		CONCOR	
PHOEN	1	2	
C		DELMA	
STASI	1	628	
100	1	635T	
		ESP	
425	1	BMD2	
STEPP	1	1020	
1925	1	1042	
	1	1054	
NEW	1	1066	
LABEL		FOLK C	
	1	36	

QUANT. ORD.	QUANT. SHIP	DESCRIPTION	BACK ORD.
360			
		GUITAR	
		PLAYER	
		3001	
		KICKIN	
		106	
		113	
		114	
		115	
		116	
		123	
		CYRIL	
		2179	
		2278	
		MJR	
	1	8127	
	1	8128	
		NESSA	
		5	
		OLD TIM	
	1	114	
		PHILO	
	1	1026	
		PIEDMO	
		1060	
		1315T	
		STRATA	
		2413	
		19748	

QUANT. ORD.	QUANT. SHIP	DESCRIPTION	BACK ORD.
		360	
		ROUNDE	
	NEW	1012	
	1	3004	
		SYMPOS	
	1	2001	
	1	2005	
		TACOMA	
	2	1008	
	3	1024	
	1	1030	
	2	1040	
	2	1048	
		4A200	
	1	1049	

QUANT.	DESC.	PRICE	AMOUNT
3		3 00	57 00
51		3 60	183 60
1		4 25	4 25

TOTALS 244 85

620

RECORD PEOPLE

32 ST. MARK'S PLACE
NEW YORK, N.Y., 10003
(212) 673-2980

#9720
9/15

INVOICE NO. 500

PICKED BY	CHECKED BY	PACKED BY	NO. PKGS.
L	S.V.	JM	1

SOLD TO
Colony
1619 Broadway
NYC 10019

SHIP TO
Same

Customer's Order No. | Store No. | Department

ORDER NO.	DATE SHIPPED	TERMS	F.O.B.	INVOICE DATE	SHIP VIA	SALESMAN
	8.12.75			9.11.75	SLG	JM

QUANT. ORD.	QUANT. SHIP	DESCRIPTION	BACK ORD.
		360	
		GOLD SQ	
	1	1754	
		JOYCE	
	1	1007	
		1012	
	1	1013	
	1	MARK 56	
	1	5??	
		3	
	1	657	
	1	MAR. BR	
	1	791	
	1	795	
	1	796	
	1	5?84	
		500	
	1		
	1		
	1

RECORD PEOPLE

32 ST. MARK'S PLACE
NEW YORK, N.Y., 10003
(212) 673-2968

6218

INVOICE NO. 132

PICKED BY	CHECKED BY	PACKED BY	NO. PKGS.

Wash of Tears

Customer's Order No. 2/25/4 | Store No. | Department

OUR ORDER NO.	DATE SHIPPED	TERMS	F.O.B.	INVOICE DATE	SHIP VIA	SALESMAN
				2/17/75		

ORDER NO.	LINE NO.	DESCRIPTION	BACK ORD.	QUANT. ORD.	QUANT. SHIP	DESCRIPTION	BACK ORD.	QUANT. ORD.	QUANT. SHIP	DESCRIPTION	BACK ORD.	QUANT. ORD.	QUANT. SHIP	DESCRIPTION	BACK ORD.
		360				360				360				525	
		CONCOR				C.P.				SPOT				BIRTH	
3	3	1		3		3001		2		100		1		2/22	
3	3	2				HALL		3		101					
3	3	4		2		109		3		103					
3		5				ETOILE		3		104					
3		7		3		1		3		105				625	
3		9				LABOR		3		107				MARK'S	
		DELMARE		3		700		3		108		2		2	
2		406				CYL				THC					
2		411		1		7283		1		1033					
2		413		1		7284				4A2					
2		417				MTE		1		1050					
1		619		2		8107		1		1051					
1		622		1		8105				ESP					
2		628		1		8108		1		1004					
1		632		2	2	8115		1		1008					
		EARTH F.		2		8116		1		1018					
3	3	1		2	2	8128		1		1030					
		FAIR.				MOTO		2		1043					
3	3	1001		2	2	12828		1		1050					
3	3	1002		2	2	12829		1		1083					
3	3	1003				PIED.									
3	3	1007		2		1068									
3	3	1008		2		13.15									
		ELY. FIS				SYM.									
2	2	7		2		2001									
2		8													
		65													

QUANT.	DESC.	PRICE	AMOUNT

EXHIBIT B - AFFIDAVIT OF THOMAS B. HOSKINS IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC.,	:	73 Civ. 394
Plaintiffs,	:	
-against-	:	
VANGUARD RECORDING SOCIETY, INC.,	:	
Defendant & Third-Party Plaintiff,	:	AFFIDAVIT
-against-	:	
HERB GART, d/b/a HERB GART MANAGEMENT, INC.,	:	
Third-Party Defendant.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THOMAS B. HOSKINS, being duly sworn, deposes and says:

1. I am the President of Music Research, Inc. ("Music Research"), one of the plaintiffs in the above action. I have personal knowledge of all the facts stated in this affidavit.

2. I make this affidavit in opposition to the motion of Vanguard Recording Society, Inc. ("Vanguard") to vacate the judgment entered against it after a jury verdict in favor of Music Research.

3. In its papers submitted in support of its motion, Vanguard argues (1) the existence of "newly discovered evidence" in the form of a certain John Hurt album which Music Research

reissued under a Piedmont-Legacy label in the United States in July of 1975 -- nearly four months prior to the trial of this action; and (2) the existence of a fraud on the Court by reason of "false" testimony. As the facts indicate, both of these claims are absurd.

4. I have read the affidavit of Eugene R. Rosenthal prepared in opposition to defendant's motion and affirm that the facts stated therein are true and accurate.

5. Mr. Solomon's statement in paragraph 14 of his affidavit that I "tried to induce Mr. Irvine not to tell anyone" that the Piedmont-Legacy album had been released is false. It would be absurd for me to try to conceal the existence of a record which had been selling for six months on the open market, having been released as early as July, 1975.

6. Mr. Vassallo's statement in paragraph 14 of his affidavit that I "requested that Irvine not tell anyone about the Piedmont release of the 'Mississippi John Hurt Volume One of a Legacy' album" is false. On that occasion I was calling him in response to a message I received when I got home that evening to return Mr. Irvine's call. In that conversation, Mr. Irvine told me that he had told Mr. Solomon about the Piedmont-Legacy release, and that Mr. Solomon had offered to finance any lawsuit Mr. Irvine wished to bring against Music Research. It would therefore have been absurd to ask Irvine not to tell Solomon what he already knew. Since he had threatened indirectly to sue my company, I did, however, tell him to call my attorney, Mr. Powell, to discuss the matter further.

7. Vanguard has also alleged that my testimony at pages

199-200 of the trial transcript is false. That is simply untrue. Mr. Concagh asked me a question which (I admitted) confused me. He then restated the question by way of clarification by asking if I intended to put out another John Hurt album. I understood his question as I believe he intended it, namely, whether I planned to put out another John Hurt recording from the vault tapes in the future. I answered, "I would like to, yes, sir." I then, in response to another question put to me by Mr. Concagh, stated my honest belief that the vault tapes do have some market value. Also, Mr. Concagh made me sound as if I had contradicted myself by stating on page 199 of the transcript that I had previously referred to the vault tapes as being "worthless". I never referred to them as being worthless, but, to the contrary, had denied that they were worthless on page 194. I did say that the value of the material was drastically reduced and that we could not produce five records (page 120), but I do not see why I should not at least attempt to retrieve the salvage value of the vault tapes.

8. It is unclear to me how my responses could be construed in any sense to be "surpressing evidence." Mr. Concagh asked me questions to which I fully and truthfully responded.

Thomas B. Hoskins
THOMAS B. HOSKINS

Sworn to before me this
18th day of February, 1976.

Robert B. Davidson
Notary Public

ROBERT B. DAVIDSON
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1977

was there just to sort of see how he would like it and then he went back to Mississippi.

Q Was he prepared to play in public upon the execution of this agreement?

A No, not really. No, that is why we had him play at this one place just to sort of get him used to it and then later before Newport he came back up. We had given him a guitar and --

THE COURT: Who is this "we" you are taling about?

THE WITNESS: Well, myself and two other partners in Music Research.

THE COURT: All right.

Q Who were these two other partners?

A Dick and Louisa Spottswood.

Q All of you participated in the activities with respect to John Hurt?

A Yes.

Q Talking about the period of a year or two following the March date of this agreement, March of 1963, what other services, if any, did you and the Spottswood's perform under the agreement for John Hurt?

A You mean for several years after that?

Q Just talking about the next two years.

A Well, we arranged for other bookings in nightclubs,

concerts.

We also recorded him extensively and produced two LP's of his music.

After a while he became, his popularity began to get to such a degree that we felt that it would be better if he moved north to Washington for a while so that he would be closer to these engagements.

After the Newport and Philadelphia Festivals the interest in him was enormous.

We called, for instance, we called the Washington Post and gave them the basic story. They sent out a feature writer who did a piece on John and the story got on the wire services and then Time and Newsweek Magazines sent people around, they wanted to do articles on him.

Everyone that heard him at the Festival, his reviews were raves.

Q Did articles about John Hurt appear in Time and Newsweek?

A Yes.

Q Did they appear in any other publication?

A Yes, there were articles in Sing Out, Downbeat.

Q When did the Time and Newsweek articles appear?

A I believe in the fall of '63 and '64.

Q Did John Hurt appear at the Newport Folk Festival

in 1963?

A Yes.

Q When was that?

A The middle of July, I believe.

Q Were there any other publications in which articles about John Hurt appeared?

A Quite a few, yes. Little Sandy Review, Blues Unlimited, all sorts of record collector magazines, all sorts of blues --

Q I show you this document and ask you whether that helps to refresh your recollection as to any other publication?

THE COURT: What number?

MR. DAVIDSON: No. 8.

MR. NEWMAN: Simply to refresh his recollection.

THE COURT: I will not have it. It has not been shown that his recollection is exhausted. Take it away from him. What is the number of that document in the pretrial order?

MR. DAVIDSON: 28 is the list of the materials. I believe that list was not intended to be exhaustive.

THE COURT: You can offer any of them that you want to offer if they are listed in the pretrial order.

Q Mr. Hoskins, I show --

THE COURT: Just offer it in evidence. That is the purpose of the pretrial order. You do not have to go through this folderol of showing people papers. Offer the exhibits that are listed.

MR. NEWMAN: I offer Exhibits 7-A, 7-B, 7-E and Mr. Davidson can give the pretrial numbers, your Honor.

THE COURT: What are the numbers?

I will get them later. I will take your representation that they are on the pretrial order.

xx (Plaintiffs' Exhibits 7-B and 7-E received in evidence.)

MR. NEWMAN: May I pass them to the jury, your Honor?

THE COURT: All right.

MR. NEWMAN: May I also state that one of them is a clipping from Newsweek Magazine, July 13, 1964.

THE COURT: That would be 82-G.

MR. NEWMAN: Yes, your Honor. Entitled, "Looking For the Blues." And the other is an excerpt from Folk Song Magazine Singout for November, 1964, pages 16 and 73.

THE COURT: 82-I.

MR. NEWMAN: Yes, your Honor.

THE COURT: Let's go forward.

Q You mentioned that there were two albums put out

under the Piedmont label?

A Yes, sir.

MR. NEWMAN: Pursuant to your Honor's instructions I am offering what we have marked as Exhibits 2 and 3 which are in the pretrial order as Exhibit 58.

THE COURT: All right.

xx (Plaintiffs' Exhibits 2 and 3 received in evidence.)

THE COURT: Is that all of the Piedmont recordings?

MR. NEWMAN: Yes, your Honor, published recordings.

THE COURT: Yes.

MR. NEWMAN: May I describe them and pass them to the jury?

THE COURT: You can hold them up so the jurors can see them. I don't really know that the jurors have to look at them now. You can hold them up and show them to them.

MR. NEWMAN: Exhibit 2, which has been received in evidence, is entitled, "Mississippi John Hurt, Folk Songs and Blues." You can see his picture on the cover.

Exhibit 3 is entitled, "Worried Blues," on the Piedmont label and has Mississippi John Hurt at the Ontario

Place as noted on the cover as well.

THE COURT: Has it been established when these were published?

MR. NEWMAN: I will ask the witness, your Honor.

Q Let me showyou these exhibits that we have just been talking about, Mr. Hoskins, Exhibit 2 and Exhibit 3. Could you tell the jury when each of those was published?

A This one in 1963 probably in the late summer or the early fall and this one --

THE COURT: Which one is "this one?"

Q Refer to them by exhibit number, please.

A No. 2, Exhibit No. 2 was published in 1963.

The second one, Exhibit 3, was published in 1964.

Q I direct your attention to the back of these and ask you if this particular physical record jacket on each of these is precisely the same as the jacket of the record when it was released in 1963 and, if not, in what way it varies?

A The only difference is that here at the bottom where the address for Music Research is was different when these were first released. So we have a different address on there.

Q In 1963 was there any mention of Bullfrog Records?

A No, Bullfrog was not mentioned.

Q Is there any other way in which this Exhibit 2 differed from the record jacket of the record that was published by Music Research in 1963?

A Yes, the logo change up here where it says Piedmont. We had a different design for just this little logo up here..

Q I ask you the same questions with respect to Exhibit 3 which you say was published after Exhibit 2?

A Yes. Again you have the different logo and on the back, Bullfrog was not mentioned when the records were first released and also the address of Music Research is different. Here it is Box 288, Silver Spring, Maryland whereas before it was a Woodstock street address in Arlington, Virginia.

Q Could you explain to the jury what the relationship of Piedmont Records was to Music Research?

A Piedmont Music Research was the name of the corporation and Music Research produced Piedmont Records. In other words, Piedmont Records was simply a record label name for Music Research.

Q Are these two albums that we just referred to, Exhibits 2 and 3, on the market today, that is, available in retail stores?

A I beg your pardon, I didn't hear you.

EXHIBIT D - AFFIDAVIT OF WILLIAM J. POWELL IN OPPOSITION TO MOTION

AFFIDAVIT

County of New York)
)ss.:
State of New York)

WILLIAM J. POWELL, being duly sworn, deposes and says:

1. I am William J. Powell, co-counsel for plaintiffs in this case.

2. In the affidavit of John A. Vassallo, attorney for defendant, he states in paragraph 15 that Irvine stated to him that he telephoned me on January 13 or 14, 1976, and that I said to him in that conversation that I "had advised Hoskins that it was not a good idea to release the album at that time." I did not make that statement. I had not known about the album's existence prior to that telephone conversation.

3. In a telephone conversation of a few days later to Mr. Irvine, I told him that neither Mr. Hoskins, Mr. Rosenthal, nor I had any objection to his coming to the United States and testifying as to the matter. Mr. Hoskins and Mr. Rosenthal were with me when I made that statement and Mr. Hoskins was listening and talking on an extension phone.

William J. Powell

William J. Powell

Sworn to before me this
18th day of February, 1976

Robert B. Davidson

Notary Public

ROBERT B. DAVIDSON
Notary Public, State of New York
No. 31-4508536
Qualified in New York County
Commission Expires March 30, 1977

REPLY AFFIDAVIT OF JOHN A. VASSALLO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC.,

Plaintiffs,

-against-

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff,

-against-

HERB GART, d/b/a HERB GART MANAGEMENT INC.,

Third-Party Defendant.

- -x

AFFIDAVIT

73 Civ. 394
(C.L.B., Jr.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN A. VASSALLO, being duly sworn, says:

1. I am a member of Kurtz & Vassallo, P.C., attorneys for defendant Vanguard Recording Society, Inc. I make this affidavit in reply to the papers submitted by plaintiffs in opposition to defendant's motion for a new trial pursuant to Rule 60(b)(2) and (3), F.R.C.P.

2. Plaintiffs' opposing papers do not seem sufficient to raise any material issue of fact. However, should this Court conclude that issues of fact material to the determination of this motion are in dispute, defendant respectfully requests an

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evidentiary hearing.

3. The issue of due diligence was adequately covered in our moving papers. However, to acquaint this Court with the conditions in the music industry which demonstrate that defendant cannot be faulted for lack of due diligence, we submit herewith additional affidavits on this issue. In any event, due diligence is irrelevant to this issue of plaintiffs' suppression of evidence and other misconduct.

4. On every other issue, plaintiffs' opposing papers, when properly analyzed, contain additional admissions of perjury and misconduct, and other material which can only serve to strengthen defendant's case.

I

5. Rosenthal's opposing affidavit (¶6) admits that "from July 10, 1975, through the present time, the Piedmont-Legacy album" was being "sent to radio stations, reviewers, trade publications, and distributors." Hoskins' affidavit (¶4) adopts Rosenthal's sworn statement. This is an unequivocal admission that Hoskins committed perjury when he testified as follows (Tr. 199):

> "Q Mr. Hoskins, was it your present intention in the summer of 1975, to put out a Mississippi John Hurt record album?
>
> A The summer of '75?
>
> Q Yes, sir.
>
> A No."

If the Hoskins and Rosenthal affidavits are not proof that the foregoing testimony was false, and that both knew it to

be false, it is difficult to conceive how a perjurious statement could ever be proved.

II

6. Rosenthal's opposing affidavit highlights a further instance in which he suppressed evidence for the purpose of concealing the new release. He describes (¶8) Adelphi's activities "in editing, dubbing, sequencing or leadering the master tapes in preparation for making the lacquer masters" for the new album. At the trial, Rosenthal testified that such activities constituted the making of "a master" (Tr. 285-86).

7. This clearly establishes that the following testimony was deceptive. Rosenthal testified at the trial (Tr. 287):

> "THE COURT: Did you ever make a master of John Hurt?
>
> Q Do you have it?
>
> A I may -- let me see -- I made equivalent master dubs for Music Research in 1965 -- in 1964 from the materials that we recorded, I supplied them mixed master dubs that they would hear what the material would sound like."

8. Earlier and later questions put to Rosenthal dealt specifically with the "mastering" of the proposed Memorial Anthology Album. The Court's question, however, was general and not limited in any way. By his answer, Rosenthal made clear that he understood it to be so, for his answer dealt with activities which took place in 1964 and 1965, five years prior to Adelphi's contract dealing with the Memorial Anthology Album.

9. If Rosenthal was able to recall activities more than ten years prior to the trial and deemed them pertinent to the Court's question, his failure to mention activities which were bound to damage plaintiffs' case and which took place only a few months before he testified, was surely deliberate

III

10. The only excuse which plaintiffs proffer for their concealment of their new release is that they actually brought a copy of the album to Court with the intention to introduce it as part of their case, but were kept from doing so by a misconstruction of this Court's ruling (Rosenthal Aff. ¶13; Hoskins Aff. ¶4). This explanation is incredible on its face. Moreover, it is clear that it is a recent concoction.

11. Thus, plaintiffs' opposing papers would have us believe that they did not inform their own attorneys about this evidence, which they brought to Court "in the hope that [they] could get it into evidence" because it would be helpful to their case (Ibid.). In his affidavit (¶2), Mr. Powell, "co-counsel for plaintiffs in this case" denies flatly that he knew of the album's existence until defendant did -- in January 1976, three months after the trial. In his opposing affidavit, Mr. Davidson does not state whether he knew any more about the new release than did Mr. Powell, and Mr. Newman gives no affidavit at all. It must be inferred that Messrs. Davidson and Newman were kept as ignorant of the new release as was Mr. Powell. If they were not they would have been in a position of knowingly condoning their clients' perjury and suppression of evidence.

12. It is of course absurd to believe that such vital evidence would not have been discussed by plaintiffs with their lawyers, or that they would not discuss with counsel the Court ruling which they claim barred its introduction.

13. In any event, there is no conceivable explanation for plaintiffs' failure to testify about the new release if they thought it helpful to their case. In fact, a copy of the album in evidence could not have made their point. Only testimony could have done so.

14. Obviously plaintiffs had no intention to divulge the existence of the new release, much less to introduce it as part of their case. On the contrary, whenever a question fairly called for disclosure of the new release, they either lied or gave misleading answers.

IV

15. Plaintiffs' opposing papers fail to deny, and even admit cryptically, other material matters on which defendant relies.

16. Thus, plaintiffs do not deny that the album which was kept from the Court, the jury, Vanguard -- and according to the opposing papers, even from plaintiffs' attorneys -- contains Hurt's performances of thirteen songs, all included in plaintiff Music Research's vault tapes, and nine of which had been included in the Hurt albums released by defendant (see Solomon moving affidavit ¶5). This admission is especially significant in light of plaintiffs' claim and testimony that it would be impossible for them to release albums containing Hurt songs which had been included in defendant's albums (Tr. 250-51, 265-68).

17. Also, defendant's moving papers (see Solomon moving affidavit, ¶15) suggest that "since January 16, 1976, plaintiffs have made some arrangement with Mr. Irvine. . . whereby they induced him not to give an affidavit on this motion, after he had agreed to do so." Plaintiffs do not squarely deny that they made an arrangement with Irvine which resulted in his failure to give an affidavit. They admit that the subject of his possible testimony was discussed by telephone between their attorney, Mr. Powell, Hoskins and Irvine "a few days" after January 13, or 14, 1976 (Powell Aff. ¶s 2,3). Powell admits (¶3) that he told Irvine "that neither Mr. Hoskins, Mr. Rosenthal, nor [Mr. Powell] had any objection to his coming to the United States and testifying as to the matter." No explanation is given as to what legitimate standing plaintiffs had to object to Irvine's testifying or as to the context in which their permission was sought or granted. Nor do plaintiffs or any of their attorneys inform us what additional conversations they may have had with Irvine beginning prior to January 19, 1976, when he stood up defendant's attorneys, or the remainder of that week, when he failed to take or return their many telephone calls.

18. Plaintiffs do not deny that Irvine had negotiated "a deal with them pertaining to John Hurt's music (see Solomon moving affidavit ¶15). It is obvious that Irvine feared the loss of some promised benefit if he gave an affidavit setting forth what he told Mr. Solomon and defendant's attorneys. In the light of the foregoing, it seems of little significance that plaintiffs claim that Irvine made statements to them on immaterial matters which cannot be reconciled with statements which he made to defendant's attorneys. However, we repeat our

request for an evidentiary hearing if this Court concludes that such claimed contradictions could affect defendant's right to the relief sought on this motion.

V

19. Point I of plaintiffs' opposing memorandum, as well as the affidavits of Messrs. Davidson and Rosenthal, labor with the absurd proposition that disclosure of the new Hurt album would not have affected the outcome of the trial -- indeed, that it would have helped their cause. This notion has already been refuted in defendant's moving affidavits and memorandum of law. In light of plaintiffs' concealment of the new album by perjury, suppression of evidence, and other misconduct, there can be no question that this newly discovered evidence was material and would have adversely affected plaintiffs' case.

Defendant's motion for judgment notwithstanding the verdict and defendant's two motions for a new trial should be granted in all respects.

/s/
JOHN A. VASSALLO

Sworn to before me this
25th day of February, 1976.

/s/
Notary Public

REPLY AFFIDAVIT OF ISRAEL HOROWITZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC.,

Plaintiffs,

-against-

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff,

-against-

HERB GART, d/b/a HERB GART MANAGEMENT INC.,

Third-Party Defendant.

AFFIDAVIT

73 Civ. 394
(C.L.B., Jr.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ISRAEL HOROWITZ, being duly sworn, deposes and says:

1. I am the New York Bureau Chief of Billboard. Billboard is the largest music trade weekly. Its circulation nationally and internationally is approximately 35,000 copies per week. This is larger than the circulation of the next two weekly music trade publications combined.

2. I have been connected with the music industry in one capacity or another since 1948 when I first joined the staff of Billboard. I left Billboard in 1956 to become connected with Decca Records, Inc., a well-known record manufacturer.

Decca Records, Inc. later merged with MCA. I left Decca in 1970, and for about two and one-half years I was a freelance record producer. In 1973 I rejoined Billboard, where I have been ever since.

3. Through my experience I gained specialized experience concerning the music trade.

4. Each year, Billboard receives approximately 3,000 newly released albums which are submitted by manufacturers for review. Billboard does not by any means receive all the newly released records.

5. The Schwann Record & Tape Guide, the most reliable consummer catalog of records and tapes available for purchase in normal record store channels, announced that it listed in the calendar year 1975 5,727 newly released stereo LP's. This does not take into account non-stereo LP's which are listed in the separate Schwann catalog or "single" records. The publishers of the Schwann catalog themselves state that they do not purport to list all newly released LP's.

6. Because of the large number of albums released each month, it is not unusual for even well informed persons in the industry to be unaware of a specific new recording unless it has been accorded some special publicity or has had strong commercial success.

/s/
ISRAEL HOROWITZ

Sworn to before me this
24 day of February,
1976.

/s/ Lillian Ivey
Notary Public
State of N.Y.
No. 41-45 23714
Qual. in Queens Co.
Commission Expires March 30, 1976

REPLY AFFIDAVIT OF MAYNARD SOLOMON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC.,

Plaintiffs,

-against-

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff,

-against-

HERB GART d/b/a HERB GART MANAGEMENT INC.,

Third-Party Defendant.

AFFIDAVIT

73 Civ. 394
(C.L.B., Jr.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MAYNARD SOLOMON, being duly sworn, deposes and says:

1. As I stated in my affidavit in support of this motion, I first learned that Piedmont had released an additional Mississippi John Hurt album from John Irvine, who mentioned it to me in a telephone conversation on January 14, 1976. Immediately after that telephone conversation, I telephoned approximately fifteen record dealers, among them some of the largest retail record dealers in New York, in an effort to locate the album in question. None of them was able to locate the record, although I gave each of them the name of the artist (Mississippi John Hurt), the title of the album, and the label on which the album was released.

2. I also had my secretary telephone the Library of Congress and personally checked the Schwann Record & Tape Guide, the most reliable consummer catalog of records and tapes available for purchase in normal record store channels, in my effort to locate the album which is the basis of this motion. The Library of Congress had no record of the album and it was not listed in the Schwann catalog. I might add that the Schwann Guide, which each month adds approximately 500 new stereo albums to its catalog, still does not list the album in question, although Piedmont's earlier two releases of Hurt albums in 1963 and 1964 are listed in that publication.

3. When I spoke with Irvine a second time, on January 15, 1976, to tell him that he had apparently given me the wrong issue of the Jazz Journal (which he had told me the day before had reviewed the album in question), he gave me the correct issue date and also furnished me with the catalog number of Piedmont's new release.

4. It was only after I could furnish the catalog number, that two of the dealers I had spoken with the day before, King Karol and Sam Goody's, were able to locate the album in question in their retail stock. It took me about a week after that, even with the catalog number and daily calls to find out that the album had been released in July of 1975.

5. From my extensive background in the record industry, I know that my difficulty in attempting to locate the album in question is not unusual. Retail stores and distributors find it very difficult to locate records, other than best sellers, without knowing the catalog number, owing to the glut of new records released every week and month.

6. My attorneys have called to my attention that the additional Piedmont Hurt album was mentioned in the September 24, 1975 issue of Walrus, a mimeographed "tip sheet" designed primarily for the use of disc jockeys and the promotional directors of radio stations and record companies. Walrus gives information about the volume and regional distribution of air play of records and is referred to by sales managers of record companies so that they may know the air play given to records and direct their sales efforts to regions where such exposure exists.

7. Until Vanguard's attorneys brought the September 24, 1975 issue of Walrus to my attention, I had never seen it. Nor is it my custom to read the Walrus publication. Vanguard's Sales Manager, who does read Walrus and who had no part in the preparation of this case, did not know that Piedmont released an additional Hurt album when I learned of it on January 14, 1976, and asked that he help me locate the album in question. His affidavit on this subject is submitted herewith. I reiterate that unlike the Schwann catalog, Walrus is not a catalog of new releases and is not referred to in the music industry as a means to locate new record albums.

8. Based upon my many years experience in the record industry and my familiarity with the manufacture, promotion, distribution and retail marketing of record albums, I can assert that it would have been virtually impossible for me to learn about the release of Piedmont's new Hurt album except through some

chance event such as Irvine's telephone call to me on January 14, 1976.

/s/
MAYNARD SOLOMON

Sworn to before me this
24th day of February,
1976.

/s/
Notary Public

JOHN A. VASSALLO
Notary Public, State of New York
No. 60-9450053
Qualified in Westchester County
Commission Expires March 30, 1976

REPLY AFFIDAVIT OF NATHAN LaPATIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC.,

Plaintiffs,

-against-

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff,

-against-

HERB GART, d/b/a HERB GART MANAGEMENT INC.,

Third-Party Defendant.

AFFIDAVIT

73 Civ. 394
(C.L.B., Jr.)

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

NATHAN LaPATIN, being duly sworn, deposes and says:

1. I am the Sales Manager of Vanguard Recording Society, Inc. As such, I subscribe to Walrus.

2. I review Walrus issues to ascertain the volume and location of air play given to Vanguard releases and to determine whether such releases are reviewed by the Walrus publication.

3. In the ordinary course of my business, I would have routinely reviewed the September 24, 1975 issue of Walrus for this purpose, although I have no specific recollection of having done so.

4. In going through Walrus, I also glance at other material which, for one reason or other, is of special interest to me.

5. I have been informed that the September 24, 1975 issue of Walrus contained an announcement of a reissue of a Piedmont label Mississippi John Hurt album. I have no recollection whatever whether I noticed this announcement. If I did I paid no attention to it because it was of no interest to me. For this same reason I would not have called it to the attention of anyone else.

6. At the time, I did not know that Vanguard was engaged in a lawsuit which involved the Piedmont label and Mississippi John Hurt.

7. To the best of my recollection, the first time I realized that there was such a lawsuit was when Maynard Solomon, in January of this year, asked me to help locate a Mississippi John Hurt recording released on the Piedmont label. Even at that time I did not look at Walrus. I was not aware that the release had been mentioned in Walrus, nor is Walrus a publication one would ordinarily turn to to locate releases.

/s/
NATHAN LaPATIN

Sworn to before me this
24 day of February
1976.

/s/ Dominick J. Carbonari
Notary Public
State of N.Y.
No. 24-5605675
Qual. Kings Co.
Comm. Expires March 30, 1976

SUR REPLY AFFIDAVIT OF THOMAS B. HOSKINS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant & Third Party Plaintiff, -against- HERB GART, d/b/a HERB GART MANAGEMENT, INC., Third Party Defendant.	AFFIDAVIT 73 Civ. 394 (C.L.B.,Jr.)

STATE OF MARYLAND } ss.:
COUNTY OF MONTGOMERY }
~~DISTRICT OF COLUMBIA) ss.:~~

THOMAS B. HOSKINS, being duly sworn, deposes and says:

1. I am the President of Music Research, Inc., ("Music Research"), one of the plaintiffs in the above action. I have personal knowledge of all the facts stated in this affidavit.

2. I make this affidavit in opposition to the reply of Vanguard Recording Society, Inc., ("Vanguard"), to plaintiffs' opposition to Vanguard's motion to vacate the judgement entered against it after a jury verdict in favor of Music Research.

3. In March of 1971 I discovered from Mr. Eugene Rosenthal that someone was pirating John Hurt material and had put out a bootleg recording in Canada called "Volume One of a Legacy." The record was on a "Legacy" label and was designated Legacy CLPS 1068. It was purported to be the

product of a Rebel Records of Canada company. Since there was insufficient reliable information on the jacket to contact the producer of it, Mr. Rosenthal, at my request, began a long investigation to find out who was producing it.

4. That investigation culminated in March, 1975, some four years later, when we verified that a John Irvine of Toronto, Canada, had put the album out. In the meantime, the defendant Vanguard had taken the rest of the John Hurt songs contained in my vault and published them, or most of them, in its albums three and four, and I filed this law suit against them. In March of 1975 Mr. Rosenthal and I went to Toronto, Canada, and confronted Mr. Irvine with the Music Research contract with John Hurt, and he admitted that apparently he did not have the right to put out the Legacy album under his contract with Wynwood Music Company of Arlington, Virginia, assuming that the latter had only been hired by Music Research to do studio recordings for it of John Hurt. I demanded the tapes, lacquer masters, metal parts, art work, and negatives used in putting out the bootleg album, and Mr. Irvine said that all of it except possibly the art work and negatives had been seized along with his other corporate assets by the bank in actions against him by his creditors, and that he had not produced any of the albums for several years in any case.

5. Since it appeared that Mr. Irvine was an innocent third party in the matter, and since he indicated interest in leasing from Music Research John Hurt material and material from Mr. Rosenthal's Adelphi Catalog for distribution in Canada only, we fully disclosed to him the nature of the law suit pending against Vanguard and that the market for John Hurt material had been drastically reduced due to the pre-emption by Vanguard of almost all of the remaining

unissued material in Music Research's vault. We also told Mr. Irvine that we had seen the Vanguard albums three and four in the record stores in Toronto.

6. Mr. Irvine still felt, however, that due to his ability to manufacture the albums at a much lower cost in Canada, there might still be a small margin of profit which he would be interested in making. I told him that nothing could be done about that until I had cleared up the matter with both Vanguard and Wynwood, but that after that I would discuss a leasing or distributing contract with him for John Hurt material for Canada only. He then sent us to Raymond Paper Products Company to see if we could at least pick up the art work and negatives for the Legacy album. We went to Raymond Paper but were told that they did not have anything.

7. After Mr. Rosenthal and I had gotten back to the United States, Mr. Rosenthal told me that he had been thinking about the Legacy album, and that he felt that since the jacket was one color plus the black printing he could reproduce it cheaply for an inexpensive run on a large volume Webb Press, reproducing the record, itself, from one of the bootleg discs using Burwen noise reduction equipment, and, hopefully, making a few hundred dollars to help with the hourly time charges of our New York lawyers in the Vanguard case, the payment of which charges was greatly in arrears. I told Mr. Rosenthal that I did not think production of the album would be worthwhile, and that I had already exhausted all of the money I had inherited, paying the New York lawyers. Mr. Rosenthal said that since the costs, as he had figured them, would be so low, he would pay them and hope to recoup them from the sales of the album, and that he would then split any profit with me on a 50-50 basis, pursuant to our distribution agreement. I told him that if he felt that it

was worth the risk, to go ahead, but that I would not be liable for any part of the production costs, if the album lost money.

8. The album was then produced by Mr. Rosenthal using the cut-rate techniques mentioned above. However, as I learned from Mr. Rosenthal at the time of the defendant's motion to vacate arose, he had had to do only four or five songs from the bootleg disc, itself, using noise reduction equipment. He had found the other eight or nine Legacy album songs on the tapes we had demanded and gotten from Wynwood on our return from Canada. Mr. Kuykendall of Wynwood had told Mr. Rosenthal that the songs on the Legacy album, which were not on the tapes, were taken from other unauthorized recordings in his possession, which he had not recorded, and which he had destroyed when Mr. Rosenthal had earlier telephoned him threatening a law suit if he did not immediately return to Music Research all of its John Hurt material. Until Mr. Rosenthal explained all of this to me at the time of the defendant's motion to vacate, I had assumed that none of the tapes we had gotten from Wynwood included any of the Legacy cuts, since Mr. Irvine had told me that the tapes had been seized by the bank. Mr. Rosenthal explained, however, that no professional recording studio would send out on a lease the raw master tapes it had, but would send mixed-master dubs of those tapes.

9. In any event, the Piedmont-Legacy CLPS 1068 was in the manufacturing process from April, 1975, to June 10, 1975, when I was shown by Mr. Rosenthal a completed album jacket and test pressings of the record and was told by him that the pressings ordered would be delivered to him ready for sale in a matter of a few days. Only at the time

the defendant's motion to vacate arose did I learn from Mr. Rosenthal that there had been another short delay in the pressings being delivered to him due to a billing mix-up at the label printing factory, but that nonetheless the albums were put on sale in the first part of July, 1975.

10. On or about February 10, 1976, Mr. Rosenthal came to me and showed me all of the sales invoices and documents showing the costs of manufacturing the Piedmont-Legacy album together with a summary showing the net profits to be slightly more than $700.00 not counting any of the studio time which Adelphi had expended in putting the album together. If Mr. Rosenthal had charged for the studio time, the net profit would have been only slightly more than $500.00. The sales invoices he showed me indicated that the peak of the sales had occurred prior to November, 1975, and that by February 10, 1976, sales had substantially fallen off. Mr. Rosenthal has told me at the time of this affidavit that sales are minimal and that we can expect them to remain so.

11. All of the sales invoices and other documents relating to the Piedmont-Legacy CLPS 1068 album have been left with Mr. Robert Davidson, Esquire, my New York counsel, and are available for inspection by either the Court or defendant's counsel. If the Court wishes to see them, Mr. Davidson will bring them to court for inspection.

12. Mr. Rosenthal also informed me that if we had put out a new album from scratch with original art work, it would have cost about twice the cost of the Piedmont-Legacy reissue, and we would have suffered a loss of at least $1,500.00, based on the sales of the Piedmont-Legacy.

13. On or about December 17, 1975, Mr. Rosenthal called me and told me that Mr. Irvine had called him, irate

that some Piedmont-Legacy albums had been sent to Canada for sale. Mr. Rosenthal told me that Mr. Irvine had thought that Adelphi owned Piedmont and had threatened to sue Adelphi for releasing in Canada the Piedmont-Legacy album. Mr. Rosenthal said that he had explained to Mr. Irvine that Adelphi had not released the album, that Piedmont was owned by Music Research, and that Adelphi merely distributed the Piedmont label, and that he would have to talk to me about it. Mr. Rosenthal also said that Mr. Irvine had told him that Vanguard had offered him all of the financial assistance necessary to file whatever suits he wished to file against Music Research or Adelphi.

14. On December 19, 1975, I called Mr. Irvine in Mr. Rosenthal's office and in his presence and told him (as Mr. Rosenthal had explained to me) that the albums had been included in a shipment of Adelphi albums to its Canadian distributor, that I had instructed Mr. Rosenthal not to send any more of the albums to Canada, other than those he was committed to ship, and that I still intended to try to consumate with him a lease or distribution arrangement, for Canada only, as soon as the Vanguard case and the Wynwood case had been finally settled. In that conversation, Mr. Irvine also told me that Mr. Solomon had on numerous occasions asked him to send him a copy of his contract with Wynwood.

15. At the time of that conversation, December 19, 1975, Solomon had not asked Irvine for his affidavit, and, in fact did not even know about the Piedmont-Legacy album, according to Solomon's affidavit of January 29, 1976, ¶16, where he states that he was not told of the Piedmont-Legacy album until January 14, 1976.

16. In any event, that was the only arrangement I have ever made with Mr. Irvine, and it was made originally

as long ago as March of 1975. It was not made as an inducement for Mr. Irvine not to give his affidavit to Vanguard, because it was made long before the trial of this case and again confirmed after the trial but before Vanguard asked for Irvine's affidavit, or even knew that the Piedmont-Legacy album existed. That arrangement with Irvine has not been modified or enlarged or changed in any way since that time.

17. At no time have I ever asked Mr. Irvine not to tell anyone about the Piedmont-Legacy album. There was no conceivable reason why I should want to conceal its existence, and such a request would have been ridiculous in view of the fact that Mr. Rosenthal and I were making every effort to publicize it and distribute it to stores, so that we could avoid a loss and hopefully make a few hundred dollars from it.

18. Mr. Solomon claims that he did not hear of the Piedmont-Legacy album until January 14, 1976, and Mr. Vassallo states in his affidavit that he made arrangements with Mr. Irvine in his telephone conversation with Irvine on January 16, 1976, for Mr. Irvine to come to New York on the 19th of January to give his affidavit. On January 21, according to the copy of the telegram attached to Vassallo's affidavit, Mr. Irvine sent a telegram to Mr. Solomon stating, "Have been advised not to enter U.S.A. until my legal position is clear Please send complete details of your case with Hoskins and MJH." But it was not until the next day, January 22, 1976, that Mr. Rosenthal, Mr. Powell, and I telephoned Mr. Irvine from Mr. Powell's Arlington residence. And since neither Mr. Rosenthal nor myself had spoken to Mr. Irvine on or after January 16th, until January 22nd, it would have certainly been impossible for us to have interfered

with Mr. Irvine's appointment with Mr. Vassallo on January 19. Moreover, after our telephone conversation with Mr. Irvine on January 22nd, Mr. Powell told me that while Mr. Rosenthal had been on the line with Irvine and him, Mr. Irvine had told him that he (Irvine) had been advised by Mr. George Goldstein, the attorney for John Hurt's estate not to come to New York and get involved in this case. While I was on the line with Mr. Powell, Mr. Powell told Mr. Irvine that none of us had any objection to Mr. Irvine coming to New York and giving his affidavit to Mr. Solomon, "In fact," said Mr. Powell, "We want you to come down to New York and give your affidavit."

19. It is apparent from this that it was on Mr. Goldstein's advice to Mr. Irvine that he did not appear on the 19th in New York.

20. In any case, the impression I received from Mr. Irvine was that he knew he had no legally binding contract with Music Research, and no obligation on the part of my company to lease to him any material or to make him my Canadian distributor, and therefore he would call and make overtures of how valuable he could be to Vanguard. Each time he did this, I told him that he should feel free to do whatever he wanted to. He even had told me in the conversation I had with him on January 13th that Solomon had tried to induce him to come to New York and give his affidavit by offering to finance any law suit Irvine wished to bring against Music Research. In all of my conversations with Mr. Irvine, beginning in March, 1975, and including conversations had in April, July, August, October, and December, as well as the ones had in January, I attempted to overcome his nervousness about not having a legally binding written contract with Music Research, by reassuring him that I still intended to make such a contract with him after the Vanguard and Wynwood

matters had been resolved.

21. In ¶5. of Mr. Vassallo's affidavit, he once again states that I committed perjury when I testified as I did on Transcript page 199. However, once again, Mr. Vassallo only quotes the transcript from Mr. Concagh's confused question, "Was it your present intention in the summer of 1975, to put out a Mississippi John Hurt record album?" through my answer of, "No." Not discernable from the transcript is a very long hesitation which occurred immediately prior to my answer of "No." It is apparent, however, that a long hesitation did occur by the text of the transcript immediately following. The very next thing said was by Mr. Concagh who stated, "You had trouble with that question." I then said, "I'm not sure exactly what you mean." Mr. Concagh then clarified his question by saying, "Don't you intend to put out another Mississippi John Hurt album?" My answer to that clarification of the question was, "I would like to, yes, sir." Mr. Vassallo thus continues to attempt to mislead the Court by his partial quote from the transcript, each time accusing me of having committed perjury. First of all, I assumed that Vanguard and Mr. Concagh knew that the Piedmont-Legacy album was on the market, and that therefore if Mr. Concagh wanted to ask me about it he would have done so. Secondly, I did not think of the Piedmont-Legacy album as being "vital evidence" in this case. To me it was a desperate shot at making a few hundred dollars if it could make any money at all in the market pre-empted by Vanguard. But even these assumptions and thoughts were not in the forefront of my mind at the time the question was asked. What was in the forefront of my mind was the fact that the Court, Mr. Concagh, and even my own attorneys had cautioned me on numerous occasions to give only short, concise, and responsive answers to the questions asked, and the fact that every time I had

tried to go beyond a simple answer in my prior testimony, I was told to simply answer "Yes" or "No." In other words, what was in the forefront of my mind was trying hard to understand exactly what question was being asked and being very careful to give as short an answer as I could think of. Mr. Concagh's mixture of past tense and present tense made me think that perhaps the question meant, "Was it your intention from the Summer of 1975 to the present to put out a John Hurt album?" During that period I did not intend to put out an album. Therefore, my truthful answer to the question as I understood it, was, "No." If Mr. Concagh had asked me if, in the summer of 1975, I intended to put out another album, my answer would still have been, "No." I had just put one out in the spring. Moreover, after Mr. Concagh had clarified his question by restating it, "Don't you intend to put out another Mississippi John Hurt album?", I immediately gave him the answer he apparently had been looking for, namely, "I would like to, yes, sir." For he immediately wound up his cross examination as follows:

"Q So what you have referred to as worthless tapes have some market value, don't they?

"A Yes.

"Q You intend to put out a record album having to do with twenty-five hours contained on this exhibit in evidence, don't you, sir?

"A Yes.

MR. CONCAGH: I have no further questions."

22. In retrospect, apparently Mr. Concagh's line of attack on me in his cross examination was to first have me say that I thought the vault tapes were worthless (which I never said), and then have me contradict that statement by admitting that they did have value as would be proven by my further admitting that I intended to put out another John

Hurt album. But Mr. Concagh did not realize that I knew that the vault tapes had a small salvage value of from $5,000.00 to $10,000.00, maximum, and that I intended to at least try to get that salvage value out of them. I would even put out the definitive anthology if I could be convinced that it would at least break even, just to put it into existence for posterity. In the transcript just two pages prior to the page (199) on which appears Mr. Concagh's confusing question, he asked me, referring to the Library of Congress tapes in my vault,

"Q Are they valuable?"

and my answer was,

"A I would say they are, yes."

Then the following exchange occurs:

"Q What do you mean when you say they are valuable?

"A Monetary wise?

"Q Yes.

"A Well, I would say that they are of sufficient quality and of such interest that phonograph records could be made from them.

"Q Do they have any interchangability, any marketability?

"A Yes."

23. Thus, Mr. Concagh got all of the answers he was looking for, except my saying that the vault tapes were "worthless," and when he could not get me to say that, he attempted to mislead the Court by saying that I had said it. (Page 199: "Q So what you have referred to as worthless tapes have some market value, don't they? A Yes.") And considering that I admitted that the vault tapes had some value, why would it be unusual for me to have issued the Piedmont-Legacy album? And what possible motive could I

have in concealing it, even if it could have been concealed? The answers are that it was not unusual for me to have issued the album; I cannot think of any reason to have concealed it; and it could not have been concealed even if I had wanted to. I, in fact, had brought the Piedmont-Legacy album to Court to try to get it into evidence to indicate the low salvage value, but it could not be offered by me, because it came into existence after the pretrial order had been finalized, as the Court ruled. Moreover, it is ridiculous to suppose that I would have jeopardized the case, the years and the money devoted to it, by making any statement under oath which I knew to be untrue or misleading, or to attempt to conceal a thing which could only have helped my case if it had been revealed. I did neither.

24. The affidavits of defendant and its counsel make much of the fact that I did not make any effort to mention the Piedmont-Legacy reissue in the middle of a dialogue between the Court and Mr. Newman, during my direct examination at Transcript Page 61 where Mr. Newman had just put into evidence the Piedmont One and the Piedmont Two albums. The Court then asked Mr. Newman, "Is that all of the Piedmont recordings?" At this point I was thinking that the question meant two things:

(a) All of the recordings released by Piedmont during the two-year period after my contract with John Hurt was signed, that two-year period (1963 and 1964) having been clearly specified as the period we were addressing ourselves to immediately prior to the question and the short digression from the discussion of Piedmont recordings. See Tr. 57 at the bottom:

"Q Talking about the period of a year or two following the March date of this agreement, March of 1963,

what other services, if any, did you and the Spottswoods perform under the agreement for John Hurt?

"A You mean for several years after that?

"Q Just talking about the next two years.

"A Well, we arranged for other bookings in night clubs, concerts. We also recorded him extensively and produced two LP's of his music."(Top of Tr. 58)

At this point the testimony digressed to talk about publicity we did for John Hurt during that same two-year period. This digression terminates on the last line of page 60, where Mr. Newman picks up the previous conversation about recordings done in the two-year period:

"Q You mentioned that there were two albums put out under the Piedmont label?

"A Yes, sir."

Mr. Newman then offers the two albums in evidence.

(b) Since that two-year period was the only period during which Music Research converted previously unissued material from its vault tapes to record albums, I was also thinking that the phrase, " * * * all of the Piedmont recordings?" referred to only recordings made from vault tapes whose songs had never before been issued as record albums.

Mr. Newman then commented Tr. 61:

"Q Yes, your Honor, published recordings.

"THE COURT: Yes."

When Mr. Newman used the adjective, "published," I construed it to mean recordings of previously unpublished vault material, therefore confirming my idea of the question being limited to recordings of previously unpublished songs. I knew that Mr. Newman was leading up to asking me about the vault tapes (Which he does at Tr. 70) and assumed that the point of the line of questions was to elicit how much of the

previously unissued, unpublished, vault material had been already used up by Music Research's own Piedmont albums, in order to to then determine the value of the vault material which had never been published and which was pre-empted by Vanguard in its albums three and four.

25. The Piedmont-Legacy album never came into my mind at all. First, because it wasn't issued in 1963-1964; second, because the great majority of it had already been published by Vanguard, third, because I do not really think of the album as being a "Piedmont" album, since it was originally put out by Legacy and reissued on a Piedmont-Legacy label; and fourth, it had nothing to do with the line of questions being asked and in no way was or is "vital evidence" for either side of this law suit.

Thomas B. Hoskins
THOMAS B. HOSKINS

Sworn to before me this 1st day of March, 1976.

Terry Lockwood
Notary Public

My Commission expires on the 1st day of July, 1978.

SUR REPLY AFFIDAVIT OF EUGENE R. ROSENTHAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant & Third Party Plaintiff, -against- HERB GART, d/b/a HERB GART MANAGEMENT, INC., Third Party Defendant.	AFFIDAVIT 73 Civ. 394 (C.L.B.,Jr.)

STATE OF MARYLAND } ss.:
COUNTY OF MONTGOMERY }
~~DISTRICT OF COLUMBIA) ss.:~~

EUGENE R. ROSENTHAL, being duly sworn, deposes and says:

1. I am the President of Adelphi Records, Inc., one of the plaintiffs in the above action. I have personal knowledge of the facts stated in this affidavit.

2. I make this affidavit in response to certain allegations made by Vanguard in its attempt to overturn the judgement rendered against it, in its reply to plaintiffs' opposition to Vanguard's motion to vacate the judgement and for a new trial.

3. In ¶5 of Mr. Vassallo's affidavit of February 25, 1976, he offers as proof of perjury on the part of Mr. Hoskins, our statements that "from July 10, 1975, through the present time, the Piedmont-Legacy album" was being "sent to radio stations, reviewers, trade publications, and distributors." Mr. Vassallo cannot seem to get through his head the difference between intending to put out an album and

having already put out an album. All of the publicity to which he refers was done after the album was out and long after any intention to put it out had occurred and terminated by its having been, in fact, put out. I had no reason to believe that Mr. Solomon or Mr. Concagh, or, for that matter, Mr. Vassallo, did not know that the Piedmont-Legacy album had been put out. I assumed, in fact, that they did know it was out because of the very publicity of which he speaks, and because it was widely available in all of the record stores. The question asked Mr. Hoskins was clearly asked not about an album he had already put out, but one he might intend to put out in the future. This was indicated in his question to me on page 276 of the Transcript, "Q Have you made any projections on paper about the new album you are going to put out after this lawsuit?"

4. In ¶¶6 and 7 of Mr. Vassallo's affidavit, he accuses me of suppressing evidence for the purpose of concealing the Piedmont-Legacy album. He feels that this was proven by my statement in my affidavit that I made a mixed master for the Piedmont-Legacy album, yet at trial when I was asked by the Court, "Did you ever make a master of John Hurt?" followed by Concagh's question, "Do you have it?" I answered "I may * * *" followed by references to 1965 and 1964 when I made mixed master dubs for Music Research. Mr. Vassallo assumes, of course, that I had the mixed master tapes of the Piedmont-Legacy album when I gave my answer and evaded admitting that I had them. He points out that the question was general and not limited in any way, particularly without reference to the Memorial Anthology album. I took the question to be a general one, but my answer was not evasive. Just before the Court's question quoted by Mr. Vassallo, we had established that when we were talking about

a "master" we were talking about a "mixed master." I had also stated that I had made a master and that I had made a master of John Hurt. Mr. Vassallo's quote begins with the Court's rephrasing the question I had just answered. Mr. Concagh, knowing I had just answered the question, posed another, "Do you have it?" Since it is normal practice in the recording business for a record company to leave its mixed masters with the lacquer mastering plant in case additional lacquer masters have to be cut, and since I had left the Piedmont-Legacy mixed masters as well as the Piedmont One and Two masters with such plants, the only mixed masters I would have would be not ones for albums, but ones for miscellaneous songs done for a client at his request prior to an album mixed master being made (if the project ever got to that stage). I was therefore trying to remember whether I had with me among the vault tapes in the courtroom any such miscellaneous mixed masters of John Hurt songs I might have done for Mr. Hoskins in 1964 and 1965, since I would have no others with me. I was therefore responsive to the questions of both the Court and Mr. Concagh, whether specific or general, and certainly not attempting to be evasive or to suppress any evidence.

5. The fact of the presence of the Piedmont-Legacy album in the courtroom at the trial is irrefutable. Both Mr. Denson, a witness at the trial, and Mr. Cuscuna, a reserve rebuttal witness, who were present throughout much of the trial, were both aware of its presence in the courtroom. Mr. Cuscuna, in fact, had requested, after having seen them in the courtroom, copies of the Piedmont-Legacy album as well as the two John Hurt Piedmont albums and a Rev. Robert Wilkins Piedmont album, which he wanted for review purposes (He is a reviewer and columnist for "Record

World," an important and well-known trade publication.)

6. I told Mr. Cuscuna in the courtroom that I could not give him those particular copies, because I was intending to enter them into evidence, but that I would get copies to him right after the trial. After the trial the box containing those albums, as well as the entire Adelphi catalog of albums, was removed for storage purposes to counsel's offices.

7. That evening Mr. Cuscuna again requested copies of the albums, but I told him that I did not have access to them at that hour, as they were locked up in counsel's offices. I told him I would get them for him the next day.

8. The next day I retrieved the box containing the albums and the other materials we had not been able to put into evidence, from counsel's offices and took it to Mr. Cuscuna's residence, where I gave him all four of the albums mentioned above, including the Piedmont-Legacy album, had a short interview with him regarding Adelphi's distribution agreement with Music Research, and told him I would put him on our reviewer mailing list for future releases. The Piedmont-Legacy album which was in the courtroom on counsel's table is therefore now in the possession of Mr. Cuscuna.

9. Two days before the trial of this case, I got together all of the materials I thought could be useful at the trial, including all of the Adelphi LP albums, about twenty-five LP's, all of the Piedmont LP's, the Piedmont-Legacy LP, newly located photographs of John Hurt, and previously unavailable reviews of John Hurt's Piedmont records, and I put them all in a phonograph record shipping box and took them to New York in the trunk of my car on the day before the commencement of trial. Mr. Powell and Mr. Hoskins accompanied me to New York in my car. We arrived at

our New York counsel's offices in the late afternoon and parked the car in a garage. We went to the counsel's offices and immediately began reviewing and preparing for the trial the next day. Well after midnight, I took a break and went to the garage to get the box of recently collected items mentioned above. I found that the garage was locked for the night, and it would be impossible to get the box of materials until the next morning, the morning of trial. That morning at about 7:00 A.M. I retrieved the box from the car and took it to counsel's office across the street and showed it to Mr. Davidson. He asked what it was, and I told him that it was some new and additional evidence we might be able to use. He asked if it had been listed in the pretrial order, and when I told him that it had not, he said that he didn't think that we could get it admitted, but to take it to the small conference room where all of the other evidence was being organized. I did so and shortly thereafter, Mr. Newman came in and I showed him the box of materials. He asked what it was, and I told him it was new and additional evidence we might be able to use. He also said that he did not think that we could get it into evidence since it had not been listed in the pretrial order. However, he began looking at some of the things in the box, namely, the old photographs of John Hurt, and the copy of the Magazine, "America" with John Hurt's color photo on the cover. He spent some time reading the reviews in the various magazines in the box, such as those in "Sing Out," "Little Sandy Review," and the Philadalphia Folk Festival Programs. When time got short, Mr. Newman said that we simply had to leave for court. I asked him what about the albums, and he said to just bring the whole box and we would do what we could to get some of the things into evidence.

10. We all left for court in great haste, and I brought the box to court in my car. It was taken into the court room and placed at the side of counsel's table. Just before the trial convened, and after the jury selection, I took from the box the photographs, the magazines, and the Piedmont-Legacy album, and put them all on counsel's table in front of Mr. Davidson with the photos and magazines on top of the albums, so that Mr. Davidson could assign them exhibit numbers. During the first part of the direct examination of Mr. Hoskins, Mr. Davidson marked exhibit numbers on the photographs and the magazines and handed them, one at a time, to Mr. Newman. The photographs were marked first and given to Mr. Newman. On Page 49 of the Transcript, the following transpired:

"Q I show you what have been marked as Exhibits 78-A through 78-E for identification and ask if you can identify them?

"A Yes, these are pictures that I took of John where he was living.

"THE COURT: Excuse me. What page of the pretrial order is this?

"MR. NEWMAN: Your Honor, this is not in the pretrial order. This is material which we have just recently obtained.

"THE COURT: I am going to adhere to the numbers in the pretrial order in the absence of a showing. I am not going to take anything that is not in the pretrial order.

* * * * *

"THE COURT: * * * Gentlemen, except as they relate to the credibility or impeachment or except for very good cause shown I shall not take any exhibits which are not listed in the pretrial order which was entered after great

effort on the part of Magistrate Hartenstein of this court on May 23, 1975.

* * * * *

"MR. NEWMAN: I can state to your Honor that these pictures have only recently become available to us. They have only recently been unearthed by the client.

"THE COURT: I am not taking them except possibly for impeachment or rebuttal." (Ending on Tr. 52)

11. Mr. Newman tried to get the "Little Sandy Review" and "America" (the slick magazine printed in Russian by the U.S.I.A. and sent to Russia in a cultural exchange arrangement), on whose cover John Hurt's picture appeared, into evidence shortly thereafter, having been handed them by Mr. Davidson from the materials I had put in front of him from the box. Next under the magazines was the Piedmont-Legacy album. However, since the two magazines had not been listed in the pretrial order, although they had been listed in a list of materials in plaintiffs' pretrial statement which was in the pretrial order as No. 28, the judge would not allow them to be put into evidence, as indicated on Tr. 59:

"Q I show you this document and ask you whether that helps you to refresh your recollection as to any other publication?

"THE COURT: What number?

"MR. DAVIDSON: No. 8.

"MR. NEWMAN: Simply to refresh his recollection.

"THE COURT: I will not have it. It has not been shown that his recollection is exhausted. Take it away from him. What is the number of that document in the pretrial order?

"MR. DAVIDSON: 28 is the list of the materials. I

believe that list was not intended to be exhaustive.

"THE COURT: You can offer any of them that you want to offer if they are listed in the pretrial order."

12. It was, by this time in the proceedings, obvious that the materials in the box which had been placed in front of Mr. Davidson on counsel's table, including the Piedmont-Legacy album, simply would not be allowed into evidence. At the end of the first day of trial, I picked up the Piedmont-Legacy album, along with the photographs and the magazines, and put them back into the box. I asked the Clerk of the Court if I could leave the box in the courtroom overnight. He said yes, that the doors would be locked. The box was left next to the rail adjacent to the courtroom doors.

13. The box remained next to the the rail as stated above, and on the day I was to testify, the following day, just before I took the stand, I removed the Piedmont-Legacy album from the box, along with all of the Adelphi albums, and took them to Mr. Davidson at counsel's table, and asked him if we could get them into evidence in my testimony. He shook his head and said, "No, they are not listed in the pretrial order, so the judge will will not allow them in evidence." I then put them back in the box next to the rail and they remained there throughout the remainder of the trial.

14. The above facts, of which I have personal knowledge are the true circumstances of how (a) the Piedmont-Legacy album did not get into evidence, even though we brought it to trial for that purpose, and (b) our counsel never knew about the album, even though it was right in front of them on counsel's table. It was simply not considered or looked at, or discussed, once it was apparent that we

were not going to be allowed to put it into evidence. Moreover, I never considered the album to be "vital evidence", but only some evidence in our favor indicating the measure of damages. The album had been brought to our counsel on the morning of trial. In the press of getting to court there was not time to discuss everything in the box, and once in court, after the things in the box which were offered in evidence had been rejected, everything else in the box would not be looked at or further discussed by our counsel, since to them it would have been a waste of time.

15. Thus the allegations contained in Mr. Vassallo's affidavit in ¶¶ 10, 11, 12, 13, and 14, are not true.

16. In ¶16 of Mr. Vassallo's affidavit, he states that our admission that nine of the songs on the Piedmont-Legacy album had been pre-empted by Vanguard is significant in light of our "claim and testimony that it would be impossible * * * to release albums containing Hurt songs which had been included in defendant's albums (Tr. 250-51, 265-68)" Yet on Page 265 of the Transcript, I answered the question, "Do you have an opinion with respect to the value of the vault tapes today?" with, "Yes, I do. * * * Maybe five to ten thousand dollars." The only time impossibility was stated was with regard to putting out the $9.95 Memorial Anthology double album in competition with defendant's $5.95 double album.

17. With regard to Mr. Vassallo's affidavit in ¶¶17, 18, and 19, I state that everything in Mr. Hoskins' affidavit attached hereto wherein it is indicated that I would have personal knowledge, or made a statement or observation, or heard a statement made, is true. In the telephone conversation in which I participated on January 22, 1976, in Mr. Powell's Arlington residence, while I was on the extension phone and Mr. Powell on the other phone,

Mr. Irvine told me that he had called Mr. George Goldstein, attorney for the John Hurt estate, in Philadelphia, and asked him whether or not he should go to New York and give Mr. Solomon his affidavit. He said that Mr. Goldstein had advised him not to go to New York and get involved in this case. Not only did neither Mr. Powell, nor Mr. Hoskins nor I in any way attempt to induce Mr. Irvine not to come to New York, but, on the contrary, I heard Mr. Powell emphatically and explicitly tell Mr. Irvine that none of us had any objection to his coming to New York to give his affidavit if he wished, and I can therefore only presume that his failure to honor Mr. Solomon's request was due to Mr. Goldstein's advice.

18. With regard to Mr. Horowitz's affidavit, I sent a listing of the Piedmont-Legacy to Schwann Record and Tape Guide, although, as Mr. Horowitz admits, that guide is primarily a "consumer" catalog. Professionals, such as recording companies, would more likely consult the trade guides for new listings, because they receive them regularly, whereas they probably would not receive Schwann at all. The trade guides are Billboard and Walrus, and the Sales Manager of Vanguard, Mr. LaPatin, in his affidavit, admits that he receives Walrus and regularly reviews it. He even states that in the ordinary course of his business, he would have routinely reviewed the issue in which appeared the listing of the Piedmont-Legacy album of John Hurt, immediately below a listing of one of Vanguard's reissues. I find it incredible that if he routinely reviewed that issue of Walrus to check Vanguard's own records, he would not have seen the Piedmont-Legacy John Hurt reissue and taken a great interest in it, knowing that his employer claimed exclusive rights to record Hurt, even if he did not know about this lawsuit. In any

case it certainly cannot be claimed that Vanguard did not have the outstanding opportunity, with the exercise of even casual observation, let alone due diligence, to know that the Piedmont-Legacy album had been issued.

Eugene Rosenthal
EUGENE R. ROSENTHAL

Sworn to before me on this 1st day of March, 1976.

Barry Feldman
Notary Public

My Commission expires on the 1st day of July, 1978.

SUR REPLY AFFIDAVIT OF WILLIAM J. POWELL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC., Plaintiffs, -against- VANGUARD RECORDING SOCIETY, INC., Defendant & Third Party Plaintiff, -against- HERB GART, d/b/a HERB GART MANAGEMENT, INC., Third Party Defendant.	AFFIDAVIT 73 Civ. 394 (C.L.B.,Jr.)

STATE OF MARYLAND }
COUNTY OF MONTGOMERY } ss.:
~~DISTRICT OF COLUMBIA] ss.:~~

WILLIAM J. POWELL, being duly sworn, deposes and says:

1. I am co-counsel for plaintiffs in this case.

2. I rode with Mr. Rosenthal and Mr. Hoskins in Mr. Rosenthal's car from Arlington, Virginia, to New York City on October 21, 1975, for the purpose of trying this case. On the morning of October 22, 1975, at about 7:00 A.M. I was in the small conference room at the law offices of Baker & McKenzie at 375 Park Avenue, when Mr. Rosenthal brought in a box containing record albums, magazines, and photographs. Shortly thereafter, Mr. Newman came in, and asked Mr. Rosenthal what the box contained. Mr. Rosenthal replied that it contained new and additional evidence which we might be able to use. Mr. Newman stated that we probably could not get it into evidence, since it had not been listed in the pretrial order. Mr. Hoskins was in the room this entire time and heard all of these statements. Mr. Newman began going through the items in the box with Mr. Hoskins

and Mr. Rosenthal, beginning with the photographs and continuing with reading the articles in the magazines. After reading some of the articles and discussing them with Mr. Hoskins, Mr. Newman stated that we simply had to get to court. He told Mr. Rosenthal and Mr. Hoskins to just bring the box of items to court and he would do what he could to get the materials into evidence. None of us had the opportunity to look at the record albums in the box before we left for court, or discuss them. After parking the car in a lot near the courthouse, and in helping to carry the many briefcases and boxes into the courthouse, I carried the aforesaid box of materials to the elevator lobby on the floor where the courtroom was, and again into the courtroom where I placed it next to plaintiffs' counsel table. After the jury selection, I observed Mr. Rosenthal take from the box some items and place them in front of Mr. Davidson at counsel's table. I observed a rust-colored record album jacket having no other color than the one. I recall seeing this album on the counsel table throughout the first day of trial. I knew it came from the box I had brought in, that the box contained some last-minute items the plaintiffs had brought up, hoping to get them into evidence, that it was unlikely that they could be gotten into evidence, that none of the counsel had had an opportunity to examine the record album, and that once the photographs and magazines had not been allowed in evidence, counsel dismissed the rest of the contents of the box from their attention or consideration (this includes myself). I did not know what the rust-colored album was, but when the Piedmont-Legacy album was shown to me by Mr. Rosenthal, or a copy thereof, at the time defendant's motion to vacate arose, I immediately recognized it to be the same as the album I had observed on the counsel table on the first day

of trial. After the first day of trial, I did not see the album again until Mr. Rosenthal showed me a copy of it at the time of defendant's motion to vacate arose.

3. I have read Mr. Hoskins' affidavit and Mr. Rosenthal's affidavit, attached hereto, and I state that all of the statements of fact contained therein of which it was indicated that I had knowledge, are true, and all of the statements said therein to have been made by me, or to have been heard by me, were in fact made or heard by me.

4. In the telephone conversation which took place at my residence in Arlington, Virginia, on January 22, 1976, between Mr. Irvine, myself, Mr. Hoskins, and Mr. Rosenthal, Mr. Irvine did state that he had been advised by Mr. Goldstein not to come down to New York and get involved in this case. I told Mr. Irvine that none of us had any objection to his coming down to give his affidavit in the case, and would even want him to do so if necessary to the case. Mr. Irvine also stated that Mr. Solomon of Vanguard had offered to finance any lawsuit he wished to bring against Music Research, Inc., or Mr. Hoskins. In a telephone conversation after January 22nd with Mr. Irvine when he had called me at my Arlington residence, he stated that he had asked for the catalogs of Music Research and Adelphi some time prior and he had not received them. He stated that I should advise my clients to keep their word and send the catalogs immediately, or he would further consult Mr. Solomon about suing my clients. I told him that what he was saying sounded like extortion. He laughed and said, "Let's just call it leverage."

5. From all of the affidavits concerned with this motion, it is apparent to me that Mr. Solomon, while accusing my clients of making some underhanded deal in obstruction of justice, with Mr. Irvine, has been the only one to have actually offered inducements to Mr. Irvine. Mr. Irvine, on

the other hand, has used the inducement offered him by Mr. Solomon to exercise "leverage" on the plaintiffs to do business with him. But the plaintiffs have evidenced no intention to do business with Mr. Irvine other than that originally evidenced long before the Piedmont-Legacy album was put out. Moreover, I am personally completely satisfied that the real reason Mr. Irvine did not come to his appointment with Messrs. Vassallo and Solomon on January 19th, was advice sought By Mr. Irvine from George Goldstein, Esq., who advised him not to come to the United States and get involved in this law suit.

6. It is also clear that Mr. Vassallo's defense is based upon quoting testimony out of its context, calling everyone liars, accusing everyone of misconduct, suppression of evidence, misleading the Court, and concocting incredible schemes to defraud the court, all on the weakest possible pretexts, assumptions, and outright speculations. And while bluffing with this machismo, attempting to build up the image of the cutrate Piedmont-Legacy album as a hidden piece of "vital evidence," never once explaining or even theorizing how it might be "vital", undoubtedly because he would be hard pressed to show that the album profited even as much as the salvage value testified to.

7. It is therefore respectfully submitted that defendant's motion should be denied in all respects.

William J. Powell
WILLIAM J. POWELL

Sworn to before me this 1st day of March, 1976,

Notary Public

My Commission expires on the 1st day of July, 1978.

NOTICE OF ENTRY

Sir:—Please take notice that the within is a *(certified)* true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,
KURTZ & VASSALLO, P. C.
Attorneys for
Office and Post Office Address
598 Madison Avenue
New York, N. Y. 10022

To
Attorney s. for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.
Dated,

Yours, etc.,
KURTZ & VASSALLO, P. C.
Attorneys for
Office and Post Office Address
598 Madison Avenue
New York, N. Y. 10022

To
Attorney s. for

Index No. Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC.,
Plaintiffs,
-against-
VANGUARD RECORDING SOCIETY, INC.,
Defendant and Third-Party Plaintiff,
-against-
HERB GART d/b/a HERB GART MANAGEMENT INC.,
Third-Party Defendant.

MOTION

KURTZ & VASSALLO, P. C.
Attorneys for Defendant Vanguard Recording Society, Inc.
Office and Post Office Address, Telephone
598 Madison Avenue
New York, N. Y. 10022
(212) 421-1870

To
Attorney s. for

Service of a copy of the within is hereby admitted.
Dated,

Attorney(s) for

RECEIVED
NOV 19 1975
PUBLICITY DEPARTMENT
BAKER & TAYLOR
for plaintiffs

U.S. DISTRICT COURT
S.D. OF N.Y.

MAR 3 1976

Motion denied. See endorsement to a companion motion filed simultaneously in this action

SO ORDERED

Charles L. Brieant
U.S.D.J.

MEMORANDUM ENDORSEMENT OF BRIEANT, D.J. DATED MARCH 3, 1976 DENYING MOTION FOR NEW TRIAL

677a

BEST COPY AVAILABLE

MEMORANDUM ENDORSEMENT OF BRIEANT, D.J. DATED MARCH 3, 1976
DENYING MOTION FOR NEW TRIAL

Endorsement

MUSIC RESEARCH, INC., and ADELPHI RECORDS, INC., Plaintiffs v. VANGUARD RECORDING SOCIETY, INC., Defendant and Third-Party Plaintiff v. HERB GART d/b/a HERB GART MANAGEMENT INC., Third-Party Defendant.

73 Civ. 394-CLB

The Court has studied the trial record in this action with care. Viewing movants' contentions as favorably as the background of this litigation and the record of the trial permits, there is no showing that plaintiff obtained its verdict by fraud, misrepresentation or other misconduct. Nor has movant persuaded the Court that the claimed newly discovered evidence could not have been, with due diligence, discovered prior to trial, nor that it would have altered the outcome of the trial.

Viewed in context, as they must be, movants' contentions reflect merely its understandable dissatisfaction with the outcome of the trial and serve to place it among those disgruntled litigants whose names are legion.

The motion is denied.

So Ordered.

Dated: New York, New York
March 3, 1976

Charles L. Brieant

CHARLES L. BRIEANT
U. S. D. J.

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No.

MUSIC RESEARCH INC., AND ADELPHI RECORDS INC.,
Plaintiffs- Appellees- Appellants,

- against -

Affidavit of Personal Service

VANGUARD RECORDING SOCIETY INC,.
Defendant and Third Party Plaintiff- Appellant- Appellee
-against-
HERB GART ,
Third Party Defendant.

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Reuben A. Shearer *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 211 West 144th Street, New York. New York 10030

That on the 11th *day of* June *19*76 *at* 598 Madison Avenue, New York, New York

deponent served the annexed Appendix ~~Brief~~ *upon*

Kurtz & Vassallo

the Attorneys *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this 11th *day of* June *19* 76

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977

Reuben Shearer

Reuben Shearer